

## Small Business Innovation Research (SBIR) Common Definitions

**Affiliate.** Entities are affiliates of each other when one controls or has the power to control the other, or a third party controls or has the power to control both regardless of whether control is exercised. The Small Business Administration (SBA) considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships to determine affiliation. Affiliate is defined in 13 CFR 121.103, "How Does SBA Determine Affiliation?" and further information about SBA's affiliation rules and a guide on affiliation is available at [www.SBIR.gov](http://www.SBIR.gov) and [www.SBA.gov/size](http://www.SBA.gov/size).

**Applicant.** An organizational entity that qualifies as an SBC at all pertinent times and that submits a contract proposal or a grant application for a funding agreement under the SBIR/STTR programs.

**Awardee.** An organizational entity that receives an SBIR or STTR Phase I, Phase II, or Phase III award. An "SBIR/STTR Awardee."

**Commercialization.** The process of developing products, processes, technologies, or services and the production and delivery (whether by the originating party or others) of the products, processes, technologies, or services for sale to or use by the Federal Government or commercial markets.

**Computer Database.** A collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

**Computer Programs.** A set of instructions, rules, or routines recorded in a form that can cause a computer to perform a specific operation or series of operations.

**Computer Software.** Computer Programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer Software does not include Computer Databases or Computer Software Documentation.

**Computer Software Documentation.** Owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the Computer Software or provide instructions for using the software.

**Covered Individual.** For due diligence against foreign risk, the term "covered individual" means any individual who contributes in a substantive and meaningful way to the scientific development or execution of a research and development project proposed to be carried out with a research and development award from a federal research agency. The U.S. DOT SBIR program considers the Principal Investigator and individuals identified as key personnel in a proposal, to include subcontractors or consultants, to be covered individuals. DOT may further designate covered individuals during award negotiations or the award period of performance.

**Covered Small Business Concern.** (SBIR only) A small business concern that: (1) was not majority-owned by multiple venture capital operating companies (VCOs), hedge funds, or private equity firms on the date on which it submitted an application in response to a solicitation under the SBIR program; and (2) is majority-owned by multiple VCOs, hedge funds, or private equity firms on the date of the SBIR award. Note: DOT does not allow firms that are majority-owned by multiple VCOs, hedge funds, or private equity firms to participate in its SBIR program.

**Data.** All recorded information, regardless of the form or method of recording or the media on which it may be recorded. The term does not include information incidental to contract or grant administration, such as financial, administrative, cost or pricing or management information.

**Employee.** Any individual employed on a full-time, part-time, or other basis so long as that individual works a minimum of 40 hours per month. This includes employees obtained from a temporary employment agency, leasing concern, through a union agreement, or co-employed pursuant to a professional employer organization agreement.

- An owner is considered an employee if the owner works a minimum of 40 hours per month regardless of whether the individual receives compensation.
- A volunteer (i.e., individuals who receive deferred compensation or no compensation, including no in-kind compensation, for work performed) is not considered an employee.
- Generally, an independent contractor (i.e., a 1099 employee) is not considered an employee. However, the Small Business Administration (SBA) will treat an independent contractor as an employee where there is evidence of an employee/employer relationship.

SBA considers the totality of the circumstances in determining whether individuals are employees. Please refer to the SBA's Size Policy Compliance Guide (<https://www.sba.gov/federal-contracting/contracting-guide/size-standards>), to determine whether individuals are employees.

**Essentially Equivalent Work.** Work that is substantially the same research, which is proposed for funding in more than one contract proposal or grant application submitted to the same federal agency, or submitted to two or more different federal agencies for review and funding consideration; or work where a specific research objective and the research design for accomplishing the objective are the same or closely related to another proposal or award, regardless of the funding source.

**Export Administration Regulations (EAR).** The EAR are issued by the U.S. Department of Commerce, Bureau of Industry and Security (BIS) under laws relating to the control of certain exports, reexports, and activities. Items subject to the EAR may include purely civilian items, items with both civil and military, terrorism or potential WMD-related applications, and items that are exclusively used for military applications but that do not warrant control under the International Traffic in Arms Regulations (ITAR). <https://www.bis.gov/regulations/ear>

**Extramural R/R&D Budget/Obligations.** The sum of an agency's total obligations for R/R&D minus amounts obligated for R/R&D activities by employees of the federal agency in or through government-owned, government-operated facilities.

**Feasibility.** The practical extent to which a project can be performed successfully.

**Federal Agency.** An executive agency as defined in 5 U.S.C. 105, and a military department as defined in 5 U.S.C. 102 (Department of the Army, Department of the Navy, Department of the Air Force), except that it does not include any agency within the Intelligence Community as defined in Executive Order 12333, § 3.4(f), or its successor orders.

**Federal Laboratory.** As defined in 15 U.S.C. 3703, means any laboratory, any federally funded research and development center, or any center established under 15 U.S.C. 3705 and 3707 that is owned, leased, or otherwise used by a federal agency and funded by the Federal Government, whether operated by the government or by a contractor.

**Federally Funded Award.** For SBIR/STTR, a Phase I, Phase II (including Direct to Phase II, sequential Phase II/subsequent Phase II and cross-agency Phase II), or Phase III SBIR or STTR award made using a funding agreement.

**Foreign Affiliation.** As defined in 15 U.S.C. § 638(e)(16), foreign affiliation means a funded or unfunded academic, professional, or institutional appointment or position with a foreign government or government-owned entity, whether full-time, part-time, or voluntary (including adjunct, visiting, or honorary). This includes appointments or positions deemed adjunct, visiting, or honorary with research institutions located in a foreign country of concern.

**Foreign Country of Concern.** As defined in 15 U.S.C. § 638(e)(17), foreign country of concern means the People's Republic of China, the Democratic People's Republic of Korea, the Russian Federation, the Islamic Republic of Iran, or any other country determined to be a country of concern by the Secretary of State.

**Foreign Entity.** Foreign entity means any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, non-profit, academic institution, research center, or organization established, directed, or controlled by foreign owners, foreign investors, foreign management, or a foreign government.

**Foreign Government.** Foreign government means any government or governmental body, organization, or instrumentality, including government-owned corporations, other than the U.S. Government or U.S. state, territorial, tribal, or jurisdictional governments or governmental bodies. The term includes, but is not limited to, non-U.S. national and subnational governments, including their respective departments, agencies, and instrumentalities.

**Foreign Nationals.** Foreign Nationals (also known as Foreign Persons) as defined by 22 CFR 120.16 means any natural person who is not a lawful permanent resident as defined by 8 U.S.C. § 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. § 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions).

**Form, Fit, and Function Data.** Data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For Computer Software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

**Fraud, Waste and Abuse.** Learn more at <https://www.sbir.gov/tutorials/fraud-waste-abuse/tutorial-1>.

- **Fraud** includes any false representation about a material fact or any intentional deception designed to deprive the United States unlawfully of something of value or to secure from the United States a benefit, privilege, allowance, or consideration to which an individual or business is not entitled.
- **Waste** includes extravagant, careless or needless expenditure of Government funds, or the consumption of Government property, that results from deficient practices, systems, controls, or decisions.
- **Abuse** includes any intentional or improper use of Government resources, such as misuse of rank, position, or authority or resources.

**Funding Agreement.** For SBIR/STTR, any contract, grant, or cooperative agreement entered into between any federal agency and any small business concern (SBC) for the performance of experimental, developmental, or research work, including products or services, funded in whole or in part by the Federal Government.

**Funding Agreement Officer.** A contracting officer, a grants officer, or a cooperative agreement officer.

**Government Purpose.** Any activity in which the U.S. Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the U.S. Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software for commercial purposes or authorize others to do so.

**Indirect Costs:** Reasonable and necessary costs of doing business that can't be directly identified with a single contract. They are logically pooled into homogenous groupings and allocated equitably across all business activities, according to the benefits each gains from them. Costs incurred for the same purpose, in like circumstances, must be treated consistently for all contracts.

- **Overhead Pools:** Costs related to supporting specific operations such as manufacturing, engineering, material handling, etc.
- **General & Administrative Pools:** Management, financial, and other expenses incurred for the general management and administration of the business unit.

**Innovation.** Something new or improved, having marketable potential, that includes the development of new technology, the refinement of existing technology, or the development of new applications for existing technology.

**Intellectual Property.** The separate and distinct types of intangible property that are referred to collectively as "Intellectual Property," include but are not limited to: patents, trademarks, copyrights, trade secrets, and mask works.

**International Traffic in Arms Regulations (ITAR).** ITAR controls the manufacture, export, and temporary import of defense articles, the furnishing of defense services, and brokering activities involving items described on the U.S. Munitions List (USML).

[https://www.pmdc.state.gov/ddtc\\_public?id=ddtc\\_public\\_portal\\_itar\\_landing](https://www.pmdc.state.gov/ddtc_public?id=ddtc_public_portal_itar_landing)

**Joint Venture.** A joint venture is an association of individuals and/or concerns with interests in any degree or proportion intending to engage in and carry out business ventures for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. See 13 CFR 121.103(h) for additional information.

**Key Personnel.** Anyone that contributes in a significant and meaningful way to the research effort. This includes the Principal Investigator/Project Manager and any other person named as a "key" employee, including subcontractors or consultants, in a proposal submitted in response to a Program Solicitation.

**Malign Foreign Talent Recruitment Program.** As defined in 42 U.S.C § 19237, the term "malign foreign talent recruitment program" means-

- (A) any program, position, or activity that includes compensation in the form of cash, in-kind compensation, including research funding, promised future compensation, complimentary foreign

travel, things of non de minimis value, honorific titles, career advancement opportunities, or other types of remuneration or consideration directly provided by a foreign country at any level (national, provincial, or local) or their designee, or an entity based in, funded by, or affiliated with a foreign country, whether or not directly sponsored by the foreign country, to the targeted individual, whether directly or indirectly stated in the arrangement, contract, or other documentation at issue, in exchange for the individual-

(i) engaging in the unauthorized transfer of intellectual property, materials, data products, or other nonpublic information owned by a United States entity or developed with a Federal research and development award to the government of a foreign country or an entity based in, funded by, or affiliated with a foreign country regardless of whether that government or entity provided support for the development of the intellectual property, materials, or data products;

(ii) being required to recruit trainees or researchers to enroll in such program, position, or activity;

(iii) establishing a laboratory or company, accepting a faculty position, or undertaking any other employment or appointment in a foreign country or with an entity based in, funded by, or affiliated with a foreign country if such activities are in violation of the standard terms and conditions of a Federal research and development award;

(iv) being unable to terminate the foreign talent recruitment program contract or agreement except in extraordinary circumstances;

(v) through funding or effort related to the foreign talent recruitment program, being limited in the capacity to carry out a research and development award or required to engage in work that would result in substantial overlap or duplication with a Federal research and development award;

(vi) being required to apply for and successfully receive funding from the sponsoring foreign government's funding agencies with the sponsoring foreign organization as the recipient;

(vii) being required to omit acknowledgment of the recipient institution with which the individual is affiliated, or the Federal research agency sponsoring the research and development award, contrary to the institutional policies or standard terms and conditions of the Federal research and development award;

(viii) being required to not disclose to the Federal research agency or employing institution the participation of such individual in such program, position, or activity; or

(ix) having a conflict of interest or conflict of commitment contrary to the standard terms and conditions of the Federal research and development award; and

(B) a program that is sponsored by-

(i) a foreign country of concern or an entity based in a foreign country of concern, whether or not directly sponsored by the foreign country of concern;

(ii) an academic institution on the list developed under section 1286(c)(8) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 2358 note; 1 Public Law 115–232); or

(iii) a foreign talent recruitment program on the list developed under section 1286(c)(9) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 2358 note; 1 Public Law 115–232).

**Operations, Maintenance, Installation, or Training Purposes (OMIT) Data.** Data that is necessary for operation, maintenance, installation, or training purposes (but not including detailed manufacturing or process data).

**Participating Agency.** A federal agency with an SBIR or STTR program. An “SBIR/STTR Agency.”

**Personal Conflict of Interest.** A situation in which an individual has a financial interest, personal activity, or relationship that could impair the employee’s ability to act impartially and in the best interest of the government when performing under the contract. (A de minimis interest that would not "impair the employee’s ability to act impartially and in the best interest of the government" is not covered under this definition.) Among the sources of personal conflicts of interest are:

- (i) Financial interests of the covered employee, of close family members, or of other members of the covered employee’s household;
- (ii) Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and
- (iii) Gifts, including travel.

Financial interests referred to in paragraph (1) of this definition may arise from-

- (i) Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;
- (ii) Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, or serving as an expert witness in litigation);
- (iii) Services provided in exchange for honorariums or travel expense reimbursements;
- (iv) Research funding or other forms of research support;
- (v) Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);
- (vi) Real estate investments;
- (vii) Patents, copyrights, and other intellectual property interests; or
- (viii) Business ownership and investment interests.

**Principal Investigator.** The one individual designated by the applicant to provide the scientific and technical direction to a project supported by the funding agreement.

**Proprietary Information.** Proprietary information is any piece of information that a small business concern considers to be non-public information that is owned by the small business concern and is marked accordingly.

**Prototype.** A product, material, object, system, or process, or a model thereof, that is in development, regardless of whether it is in tangible, electronic, graphic or other form, at any stage of development prior to its intended ultimate commercial production and sale. The term “prototype” includes computer programs embedded in hardware or devices.

**Research or Research and Development (R/R&D).** Any activity that is: (1) a systematic study directed toward greater knowledge or understanding of the subject studied; (2) a systematic study directed specifically toward applying knowledge and innovation to meet a recognized but unmet need; or (3) a systematic application of knowledge and innovation toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

**SBIR/STTR Computer Software Rights.** The Federal Government's rights during the SBIR/STTR protection period in specific types of SBIR/STTR data that are computer software.

(1) The Federal Government may use, modify, reproduce, release, perform, display, or disclose SBIR/STTR data that are computer software within the Federal Government. The Government may exercise SBIR/STTR computer software rights within the Government for:

(i) Use in government computers;

(ii) Modification, adaptation, or combination with other computer software, provided that the data incorporated into any derivative software are subject to the rights in paragraph (ee) and that the derivative software is marked as containing SBIR/STTR data;

(iii) Archive or backup; or

(iv) Distribution of a computer program to another government agency, without further permission of the awardee, if the awardee is notified of the distribution and the identity of the recipient prior to the distribution, and a copy of the SBIR/STTR computer software rights included in the funding agreement is provided to the recipient prior to the distribution. The agency in receipt of the distributed SBIR/STTR data is subject to the data rights provisions in the SBIR/STTR awardees SBIR/STTR funding agreement.

(2) The Government shall not release, disclose, or permit access to SBIR/STTR data that is computer software for commercial, manufacturing, or procurement purposes without the written permission of the awardee. The Government shall not release, disclose, or permit access to SBIR/STTR data outside the Government without the written permission of the awardee unless:

(i) The non-governmental entity has entered into a non-disclosure agreement with the Government that complies with the terms for such agreements outlined in section 8 of the SBIR/STTR Policy Directive; and

(ii) The release or disclosure is—

(A) To a government support service contractor or their subcontractor in the performance of a government support services contract for internal government use or activities, including evaluation, diagnosis and correction of deficiencies, and adaptation, combination, or integration with other computer software, provided that SBIR/STTR data incorporated into any derivative software are subject to the rights in paragraph (ee) of the directive, and provided that the release is not for commercial purposes or manufacture; or

(B) Necessary to support certain narrowly tailored essential government activities for which law or regulation permits access of a non-government entity to a contractors' data developed exclusively at private expense, non-SBIR/STTR data, such as for emergency repair and overhaul.

**SBIR/STTR Data.** All data developed or generated in the performance of an SBIR or STTR award, including technical data and computer software developed or generated in the performance of an SBIR or STTR award. The term does not include information incidental to contract or grant administration, such as financial, administrative, cost or pricing or management information.

**SBIR/STTR Data Rights.** The Government's license rights in properly marked SBIR/STTR data during the SBIR/STTR protection period as follows:

- SBIR/STTR technical data rights in SBIR/STTR data that are technical data or any other type of data other than computer software and SBIR/STTR computer software rights in SBIR/STTR data that is computer software.
- Upon expiration of the protection period for SBIR/STTR data, the Government has a royalty-free license to use, and to authorize others to use on its behalf, these data for government purposes, and is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. The Government receives unlimited rights in all form, fit, and function data, OMIT data, and unmarked SBIR/STTR data.

**SBIR/STTR Protection Period.** The period during which the Government is obligated to protect SBIR/STTR data against unauthorized use and disclosure in accordance with SBIR/STTR data rights. The SBIR/STTR protection period begins at award of an SBIR/STTR funding agreement and ends not less than twenty years from that date. (See section 8(b)(4) of the SBIR/STTR Policy Directive).

**SBIR/STTR Technical Data Rights.** The Federal Government's rights during the SBIR/STTR protection Period in SBIR/STTR data that are technical data or any other type of data other than computer software.

(1) The Government may, use, modify, reproduce, perform, display, release, or disclose SBIR/STTR data that are technical data within the Federal Government; however, the Federal Government shall not use, release, or disclose the data for procurement, manufacture or commercial purposes; or release or disclose the SBIR/STTR data outside the Government except as permitted by paragraph (2) below or by written permission of the awardee.

(2) SBIR/STTR data that are technical data may be released outside the Federal Government without any additional written permission of the awardee only if the non-governmental entity or foreign government has entered into a non-disclosure agreement with the Federal Government that complies with the terms for such agreements outlined in section 8 of the SBIR/STTR Policy Directive and the release is:

(i) Necessary to support certain narrowly tailored essential government activities for which law or regulation permits access of a non-government entity to a contractors' data developed exclusively at private expense, non-SBIR/STTR data, such as for emergency repair and overhaul.

(ii) To a government support services contractor in the performance of a government support services contract for internal government use or activities, including evaluation, diagnosis or modification provided that SBIR/STTR technical data incorporated into any derivative data are subject to the rights in paragraph (ii), and the release is not for commercial purposes or manufacture;

(iii) To a foreign government for purposes of information and evaluation if required to serve the interests of the U.S. Government; or

(iv) To non-government entities or individuals for purposes of evaluation.

**Selection Criteria:** The factors considered when reviewing an application or proposal submission to determine selection for award.

**Small Business Concern (SBC).** A concern that meets the SBIR/STTR program eligibility requirements set forth in 13 CFR 121.702, “What size and eligibility standards are applicable to the SBIR and STTR programs?”. An SBC must satisfy the following conditions on the date of award:

- a. Is organized for profit, with a place of business located in the United States, which operates primarily within the United States, or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials or labor;
- b. Is in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that if the concern is a joint venture, each entity to the venture must meet the requirements set forth in paragraph (c) below;
- c. Is more than 50% directly owned and controlled by one or more individuals (who are citizens or permanent resident aliens of the United States), other small business concerns (each of which is more than 50% directly owned and controlled by individuals who are citizens or permanent resident aliens of the United States), or any combination of these; and
- d. Has, including its affiliates, not more than 500 employees.

**Solicitation.** A formal solicitation for proposals issued by a federal agency that notifies the small business community of its R/R&D needs and interests in broad and selected areas, as appropriate to the agency, and requests for proposals from SBCs in response to these needs and interests. They can go by a variety of names including Request for Proposals (RFP), Broad Agency Announcement (BAA), Notice of Funding Opportunity (NOFO), or Funding Opportunity Announcement (FOA). These announcements include eligibility requirements, proposal preparation instructions, submission requirements, and evaluation criteria.

**Student/Faculty-owned SBC.** A small business that is majority-owned by a faculty member or a student of an institution of higher education as defined in 20 U.S.C. 1001.

**Subcontract.** Any agreement, other than one involving an employer-employee relationship, entered into by an awardee of a funding agreement calling for supplies or services for the performance of the original funding agreement.

**Subcontractor.** Subcontractor means any supplier, distributor, vendor, firm, academic institution, research center, or other person or entity that furnishes supplies or services pursuant to a subcontract.

**Technical and Business Assistance (TABA).** Additional funding to secure services that assist SBIR awardees in: (1) making better technical decisions on SBIR projects; (2) solving technical problems that arise during SBIR projects; (3) minimizing technical risks associated with SBIR projects; and (4) commercializing the SBIR products or processes.

**Technical Data.** Recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation and computer databases). The term does not include computer software or financial, administrative, cost or pricing, or management information, or other data incidental to contract or grant administration. The term includes recorded data of a scientific or technical nature that is included in computer databases.

**Topic:** The research area to which you propose. For DOT, these are established by the participating DOT Operating Administrations and align with high priority technology areas.

**United States.** The 50 states, the territories and possessions of the Federal Government, the Commonwealth of Puerto Rico, the District of Columbia, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

**Unlimited Rights.** The Federal Government's rights to use, modify, prepare derivative works, reproduce, release, perform, display, disclose, or distribute data in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.