



**FY 2023**

**Small Business Innovation Research  
(SBIR) Program Phase II**

**Notice of Funding Opportunity (NOFO)**

**ANNOUNCEMENT**

**FUNDING OPPORTUNITY NUMBER: 2023-NIST-SBIR-02**

Catalog of Federal Domestic Assistance (CFDA) Number:  
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**U.S. DEPARTMENT OF COMMERCE  
National Institute of Standards and Technology**

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<http://www.nist.gov/sbir>

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**US DEPARTMENT OF COMMERCE  
NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY  
FY 2023 SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM  
PHASE II NOTICE OF FUNDING OPPORTUNITY (NOFO)**

## **1.0 PROGRAM DESCRIPTION AND FEDERAL AWARD INFORMATION**

### **1.01 Introduction**

The National Institute of Standards and Technology (NIST) invites FY 2022 NIST SBIR Phase I awardees to submit Phase II research applications under this Notice of Funding Opportunity (NOFO). Only FY 2022 NIST SBIR Phase I awardees are eligible to submit applications in response to this NOFO for Phase II of their projects.

The Small Business Innovation Research (SBIR) program was originally established in 1982 by the Small Business Innovation Development Act (P.L. 97-219), codified at 15 U.S.C. § 638. It was then expanded and extended by the Small Business Research and Development (R&D) Enhancement Act of 1992 (P.L. 102-564), and received subsequent reauthorization and extensions, the most recent of which extends the SBIR program through 2025. (P.L. 117-183).

Eleven Federal agencies implement SBIR by setting aside a portion of their extramural research and development budget each year to fund research applications from small science and technology-based firms. The statutory purpose of the SBIR Program is to strengthen the role of innovative small business concerns (SBCs) in Federally-funded research or research and development (R/R&D). Specific program goals are to: (1) stimulate technological innovation; (2) use small business to meet Federal R/R&D needs; (3) foster and encourage participation by socially and economically disadvantaged small businesses and by women-owned small businesses in technological innovation; and (4) increase private sector commercialization of innovations derived from Federal R/R&D, thereby increasing competition, productivity, and economic growth.

The NIST FY 2023 SBIR program identifies and solicits applications in topics that fall within NIST's mission and allow collaboration between NIST scientists and the SBIR awardees whenever possible.

When reviewing applications, NIST gives high priority to SBCs that participate in or conduct

energy efficiency or renewable energy system R&D projects, consistent with [Executive Order \(EO\) 13329](#) “Encouraging Innovation in Manufacturing,” the Energy Independence and Security Act of 2007 (P.L. 110-140 § 1203(e), codified at 15 U.S.C. § 638(z)), and the [Small Business Administration \(SBA\) Small Business Innovation Research \(SBIR\) and Small Business Technology Transfer \(STTR\) Program Policy Directive](#), § 9.

For any SBIR award that requires a license to use a NIST-owned invention covered by a patent or patent application, the SBIR awardee will need to contact NIST’s Technology Partnerships Office for a license to use the NIST-owned invention. Such awardees will be granted a non-exclusive research license and will be given the opportunity to negotiate a non-exclusive or an exclusive commercialization license to the NIST-owned invention, in accordance with the Federal patent licensing regulations, set forth in 37 C.F.R. Part 404, and to the extent that such NIST-owned invention is available for licensing and has not otherwise been exclusively licensed to another party. It is the goal of this program to position the SBIR awardee to use and build upon such licensed NIST-owned invention with the awardee’s own innovation to develop a commercially viable product based on the NIST-owned invention.

## **1.02 Three-Phase Program**

The SBIR statute (15 U.S.C. § 638) requires the Department of Commerce to establish a three-phase SBIR program by reserving a percentage of its extramural R&D budget to be awarded to SBCs for innovation research. SBIR policy is provided by the SBA through the [SBIR/STTR Policy Directive](#).

The funding vehicles for NIST’s SBIR program in both Phase I and Phase II are cooperative agreements. NIST’s authority to implement its SBIR program through cooperative agreements is 15 U.S.C. § 272(b)(4). NIST programmatic authorities for the research areas listed in this NOFO are found at 15 U.S.C. § 272(b) and (c). The nature of NIST’s “substantial involvement” will generally be collaboration with the awardees in carrying out the projects’ approved scope of work. Grants and agreements administrative requirements set forth at 2 C.F.R. Part 200 will apply to NIST SBIR awards.

### **1.02.01 Phase I - Feasibility Research**

The purpose of Phase I is for NIST to determine the technical feasibility of the research,

preliminary commercialization merit of the proposed effort, and the quality of the awardee's performance. The application should concentrate on describing research that will significantly contribute to proving the feasibility of the proposed Phase II research and commercialization potential, prerequisites to receiving further support in Phase II. Each Phase I award is for up to \$100,000 and up to a six (6) month period of performance. Up to an additional \$6,500 may be requested for Technical and Business Assistance (TABAs); see Section 5.12 for more information about TABAs. NIST's inclusion of TABA funds in the award will be subject to the availability of NIST funding.

**This NOFO is not soliciting applications for Phase I research.**

### **1.02.02 Phase II - Research and Development**

This NOFO provides an opportunity to all NIST FY 2022 SBIR I awardees to submit a Phase II application following the completion of Phase I. This NOFO provides instructions for FY 2023 NIST SBIR Phase II application preparation and submission requirements.

In Phase II, work from Phase I that exhibits potential for commercial application is further developed. Phase II is the R&D or prototype development phase. To apply for a Phase II award, each Phase I awardee will be required to submit a comprehensive application outlining the proposed research and a detailed plan to commercialize the final product. Each NIST Phase II award is for up to \$400,000 and up to a 24-month period of performance. One year after completing the Phase II R&D activity, the awardee shall be required to report on its commercialization activities.

### **1.02.03 Phase III - Commercialization**

Phase III refers to work that derives from, extends, or completes an effort made under prior SBIR funding agreements, but is funded by sources other than the SBIR Program. Phase III work is typically oriented towards commercialization of SBIR research or technology and may be for products, production, services, R/R&D or a combination thereof.

### **1.02.04 Commercialization Readiness Pilot Program**

As allowed in Section 5123 of the SBIR/STTR Reauthorization Act of 2011, Division E of Pub. L. 112-81, codified in 15 U.S.C. § 638(gg), NIST has received authorization to establish a Commercialization Readiness Pilot Program (CRPP). NIST may provide follow-on funding (up

to an additional \$100,000) to selected awardees after completion of Phase II. The funding would be used to further develop Phase II technologies, to support advancement toward Phase III, and to increase the likelihood of commercialization. NIST is under no obligation to make any CRPP awards.

### **1.03 SBIR Applicant Eligibility and Limitations**

#### **1.03.01 Applicant Qualifications**

Under this NOFO, only FY 2022 NIST SBIR Phase I awardees are eligible to submit applications. Applications received from entities other than FY 2022 NIST SBIR Phase I awardees will not be reviewed or considered for award. Each applicant must qualify as an SBC for R/R&D purposes, as defined in Section 1.05 of this NOFO, at the time of award. In addition, the primary employment of the principal investigator must be with the small business at the time of the award and during the conduct of the proposed research. Primary employment means that more than one-half of the principal investigator's time is spent working with the small business. Primary employment with a small business precludes full-time employment with another organization. Occasionally, deviations from this requirement may occur, which must be approved in writing by the NIST Grants Officer after consultation with the SBIR Program Manager. Further, a small business may only replace the principal investigator on an SBIR Phase II award if the NIST Grants Officer provides prior written approval. Personnel obtained through a Professional Employer Organization or other similar personnel leasing company may be considered employees of the awardee.

The R/R&D work must be performed in the United States. Requests for an exemption must be submitted in writing at the time of application submission. Only rare and unique circumstances will be considered for an exemption. The NIST Grants Officer must approve each exemption and its terms in writing.

NIST has elected to not use the authority that would allow venture capital operating companies (VCOCs), hedge funds or private equity firms to participate in the SBIR Program. Therefore, applications in which work would be performed by VCOCs will not be considered for award.

For Phase II, a minimum of one-half of the research and/or analytical effort must be performed by the awardee. The total cost for all consultant fees, facility leases, usage fees, and other subcontract/subaward or purchase agreements, excluding funds requested for



TABA (see Section 5.12), may not exceed one-half of the total award.

Each applicant will be required to provide certain information via [www.sbir.gov](http://www.sbir.gov) as well as other information required by the SBIR/STTR Policy Directive (see Appendices V-VI), found at [Small Business Innovation Research \(SBIR\) Program Policy Directive Appendices](#). Each SBC applying for an award is required to update the appropriate information in the SBA database on SBIR.gov for any of its existing and prior Phase II awards. Applicants may not participate in the review of applications.

The statement of work of an SBIR award awarded under this NOFO cannot overlap with the statement of work of an existing NIST Cooperative Research and Development Agreement (CRADA) with the awardee. NIST will consider the issue of any potential overlap on a case- by-case basis.

### **1.03.02 Company Registry Requirements**

SBA maintains and manages a [Company Registry](#) at to track ownership and affiliation requirements for all companies applying to the SBIR Program. **Each Phase II applicant must register in the Company Registry prior to submitting an application. The applicant must save its information from the registration in a .pdf document and append this document to the SF-424 (R&R) form as described in Section 8.02. of this NOFO.** All applicants are required to report and/or update their registration information in the SBA Company Registry prior to each SBIR application submission or if any information changes prior to an award.

### **1.04 Contact with NIST**

For general programmatic, electronic submission, or grants questions, please contact the appropriate individual:

| Subject Area   | Point of Contact  |
|--|---|
| Programmatic Questions                               | Jacqueline Gray<br>Phone: (301) 975-2522<br>E-mail: <a href="mailto:jacqueline.gray@nist.gov">jacqueline.gray@nist.gov</a><br>or<br>Nicole Berry<br>Phone: (202) 235-3675<br>E-mail: <a href="mailto:nicole.berry@nist.gov">nicole.berry@nist.gov</a> |
| Electronic Application Submission through Grants.gov | Grants.gov<br>Phone: (800) 518-4726<br>E-mail: <a href="mailto:support@grants.gov">support@grants.gov</a>   |
| Grant Rules and Regulations                          | Dean Iwasaki<br>Phone: (301) 975-8449<br>E-mail: <a href="mailto:dean.iwasaki@nist.gov">dean.iwasaki@nist.gov</a>   |

Applicants may also contact the NIST Hollings Manufacturing Extension Partnership (MEP) for technical assistance with application preparation. More information on obtaining technical assistance from MEP Centers for application preparation can be found in Section 5.13 of this NOFO.

### 1.05 Definitions

#### (a) General Definitions

Except as specifically noted by citation or reference, all definitions below are excerpted from the [SBA SBIR/STTR Policy Directive](#).

Applicant – The 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 – The 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.

Contract, see 2 CFR §200.1 - For the purpose of Federal financial assistance, a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a Federal award. For additional information on subrecipient and contractor determinations, see [§ 200.331](#).

Cooperative Agreement, see 2 CFR §200.1 - A legal instrument of financial assistance between a Federal awarding agency and a recipient or a pass-through entity and a subrecipient that is consistent with [31 U.S.C. 6302,6305](#):

- (1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose of support or stimulation authorized by a law of the United States and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use;
- (2) Is distinguished from a grant in that it provides for substantial involvement of the Federal awarding agency in carrying out the activity contemplated by the Federal award.

Covered Individual, see 15 U.S.C. § 638(e)(15) – An individual who—

- (1) contributes in a substantive, 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; and
- (2) is designated as a covered individual by the Federal research agency concerned.

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.

Federally Funded Award - A Phase I, Phase II (including a Phase II award under subsection (cc)), or Phase III SBIR or STTR award made using a funding agreement.

Foreign Affiliation, see 15 U.S.C. § 638(e)(16) - 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).

Foreign Country of Concern, see 15 U.S.C. § 638(e)(17) - 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.

Funding Agreement - Any contract, grant, or cooperative agreement entered into between any Federal agency and any SBC for the performance of experimental, developmental, or research work, including products or services, funded in whole or in part by the Federal Government.

Joint Venture – See 13 C.F.R. § 121.103(h).

Malign Foreign Talent Recruitment Program, see 15 U.S.C. § 638(e)(18), citing 42 U.S.C. § 19237  
– Is –

(1) 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
- (2) 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; 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; Public Law 115-232).

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.

Small Business Concern (SBC) – A concern that meets the SBIR/STTR program eligibility requirements set forth in [13 C.F.R. 121.702](#), “What size and eligibility standards are applicable to the SBIR and STTR programs?”

Socially and Economically Disadvantaged SBC (SDB) - See 13 C.F.R. Part 124, Subpart B.

Socially and Economically Disadvantaged Individual - See 13 C.F.R. §§ 124.103 and 124.104.

Subaward, see 2 CFR §200.1 - An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Women-Owned Small Business (WOSB) - An SBC that is at least 51% owned by one or more women, or in the case of any publicly owned business, at least 51% of the stock is owned by women, and women control the management and daily business operations.

(b) Definitions related to rights in data developed under the SBIR program. These definitions are also included in Section 5.04.02 of this NOFO.

All definitions below are excerpted from the [SBA SBIR/STTR Policy Directive](#).

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 is

capable of causing 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.

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.

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.

Government Purpose - Any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States 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.

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).

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 Government. The Federal Government may exercise SBIR/STTR Computer Software Rights within the Government for:

- (i) Use in Federal 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 § 3(ee) of the SBIR/STTR Policy Directive 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 Federal 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.

(2) The Federal 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 Federal 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 § 8 of the SBIR/STTR Policy Directive; and

- (ii) The release or disclosure is—

- (A) To a Federal Government support service contractor or their subcontractor for purposes of supporting Government internal 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 § 3(ee) of the SBIR/STTR Policy Directive; 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 Federal Government's license rights in properly marked SBIR/STTR Data during the SBIR/STTR Protection Period are 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 Federal 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 Federal Government receives Unlimited Rights in Form Fit, and Function Data, OMIT Data, and all unmarked SBIR/STTR Data.

SBIR/STTR Protection Period - The period of time during which the Federal 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 § 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 Federal Government may, use, modify, reproduce, perform, display, release, or disclose SBIR/STTR Data that are Technical Data within the Government; however, the Government shall not use, release, or disclose the data for procurement, manufacturing, or commercial purposes; or release or disclose the SBIR/STTR Data outside the Government except as permitted by paragraph (B) 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 § 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 § 3(ii) of the SBIR/STTR Policy Directive, 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.

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.

Unlimited Rights - The Government's rights to access, 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.

## 1.06 Fraud, Waste and Abuse

As defined in the SBIR/STTR Policy Directive section 9(f), 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. Examples of fraud, waste, and abuse relating to the SBIR/STTR Program include, but are not limited to:

- (i) misrepresentations or material, factual omissions to obtain, or otherwise receive funding under, an SBIR/STTR award;
- (ii) misrepresentations of the use of funds expended, work done, results achieved, or compliance with program requirements under an SBIR/STTR award;
- (iii) misuse or conversion of SBIR/STTR award funds, including any use of award funds while not in full compliance with SBIR/STTR Program requirements, or failure to pay taxes due on misused or converted SBIR/STTR award funds;
- (iv) fabrication, falsification, or plagiarism in applying for, carrying out, or reporting results from an SBIR/STTR award;
- (v) failure to comply with applicable federal costs principles governing an award;
- (vi) extravagant, careless, or needless spending;
- (vii) self-dealing, such as making a sub-award to an entity in which the Principal Investigator (PI) has a financial interest;
- (viii) acceptance by agency personnel of bribes or gifts in exchange for grant or contract awards or other conflicts of interest that prevents the Government from getting the best value; and

(ix) lack of monitoring, or follow-up if questions arise, by agency personnel to ensure that awardee meets all required eligibility requirements, provides all required certifications, performs in accordance with the terms and conditions of the award, and performs all work proposed in the application.

Report any allegations of fraud, waste and abuse using the [online Department of Commerce Office of Inspector General Complaint Form](#).

Contact information for the Office of Inspector General is available at: <https://www.oig.doc.gov/pages/Contact-Us.aspx>. Please do not include Personally Identifiable Information (PII) through the website. PII is considered to be items containing Social Security numbers, dates of birth, credit card and passport numbers, or other personally identifying information that could adversely affect an individual. Should you desire to provide this information, it is strongly recommended that you contact the Hotline by telephone at the number listed below.

**Phone:**

Toll Free 800-424-5197

**Mail:**

Office of Inspector General Hotline  
HCHB 7709  
1401 Constitution Avenue, N.W.  
Washington, DC 20230

## **1.07 Other Information**

### **1.07.01 Personal and Business Information**

Information and data contained in applications for financial assistance, as well as information and data contained in financial, performance and other reports submitted by applicants, may be used by the Department of Commerce in conducting reviews and evaluations of its financial assistance programs. For this purpose, applicant information and data may be accessed, reviewed and evaluated by Department of Commerce employees, other Federal employees, and also by Federal agents and contractors, and/or by non-Federal personnel, all of whom enter into appropriate conflict of interest and confidentiality agreements covering the use of such information. As may be provided in the terms and conditions of a specific financial assistance award, applicants are expected to

support program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and by cooperating with Department of Commerce and external program evaluators. In accordance with 2 C.F.R. § 200.303(e), applicants are reminded that they must take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained in connection with a Department of Commerce financial assistance award.

In addition, Department of Commerce regulations implementing the Freedom of Information Act (FOIA), 5 U.S.C. § 552, are found at 15 C.F.R. Part 4, Public Information. These regulations set forth rules for the Department regarding making requested materials, information, and records publicly available under the FOIA. Applications submitted in response to this Notice of Funding Opportunity may be subject to requests for release under the Act. In the event that an application contains information or data that the applicant deems to be confidential commercial information that should be exempt from disclosure under FOIA, that information should be identified, bracketed, and marked as Privileged, Confidential, Commercial or Financial Information. In accordance with 15 CFR § 4.9, the Department of Commerce will protect from disclosure confidential business information contained in financial assistance applications and other documentation provided by applicants to the extent permitted by law.

## 2.0 CERTIFICATIONS

### 2.01 Due Diligence Certification

[The SBIR and STTR Extension Act of 2022, Pub. L. 117-183](#), requires that all agencies funding SBIR awards, including NIST, establish a due diligence program to assess security risks presented by small business concerns seeking a federally funded SBIR award. Specifically, NIST must assess the “cybersecurity practices, patent analysis, employee analysis, and foreign ownership of a small business concern seeking an award, including any financial ties and obligations (which shall include surety, equity, and debt obligations) of the small business concern and [its] employees . . . to a foreign country, foreign person, or foreign entity. . . ”. [15 U.S.C. § 638\(vv\)\(2\)](#). NIST is prohibited from funding awards to businesses with specified relationships and commitments described in [15 U.S.C. § 638\(g\)\(15\)\(A\)](#) to foreign countries of concern that are determined to fall into one of the categories listed in [15 U.S.C. § 638\(g\)\(15\)\(B\)](#).

As a result of these statutory requirements, all applicants must complete a certification that discloses the ownership, financial ties, technology licensing or intellectual sales, and other affiliations, as specified in [15 U.S.C. § 638\(g\)\(13\)](#), to the People’s Republic of China, the Democratic People’s Republic of Korea, the Russian Federation, the Islamic Republic of Iran, and/or any other country determined to be a country of concern by the Secretary of State of concern prior to award, and as required during the life of the funding agreement. The certification is available in Appendix B of this NOFO.

## **2.02 Funding Agreement Certification**

Awardees will be required to certify size, ownership and other SBIR Program requirements at the time of award and during the funding agreement life cycle using the SBIR Funding Agreement Certification and the SBIR Funding Agreement Certification – Life-Cycle Certification, which are provided in Appendix B of this NOFO.

## **2.03 Research Activities Involving Human Subjects, Human Tissue, Data or Recordings Involving Human Subjects Including Software Testing**

This section summarizes the requirements for applications that potentially involve research involving human subjects. Additional information that describes the NIST review process for such applications and provides details regarding the documentation required is available here: <https://www.nist.gov/oaam/nist-notice-funding-opportunity-requirements-human-subjects-and-live-vertebrate-animal>. Both this summary and the additional information provided at the link will be incorporated into any award made under this NOFO.

Any application that includes research activities involving human subjects, human tissue/cells, or data or recordings from or about human subjects must satisfy the requirements of the Common Rule for the Protection of Human Subjects (“Common Rule”), codified for the Department of Commerce at [15 C.F.R. Part 27](#)<sup>1</sup>. Research activities involving human subjects that fall within one or more of the classes of vulnerable subjects found in [45 C.F.R. Part 46](#), Subparts [B](#), [C](#) and [D](#) must satisfy the requirements of the applicable subpart(s). In addition, any such application that includes research activities on these subjects must comply with all applicable statutory requirements imposed upon the Department of Health and Human Services (DHHS) and other Federal agencies, all regulations, policies and guidance adopted by

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<sup>1</sup> NIST uses the Common Rule definitions for research and human subjects research contained in 15 C.F.R. § 27.102.

DHHS, the [Food and Drug Administration \(FDA\)](#), and other Federal agencies on these topics, and all Executive Orders and Presidential statements of policy on applicable topics. The [website of the Office of Human Research Protection](#) (OHRP) in the DHHS contains the applicable regulatory, policy and guidance and includes links to [FDA](#), but may not include all applicable FDA regulations and policies.

If the application is accepted for [or awarded] funding, organizations that have an Institutional Review Board (IRB) are required to follow the procedures of their organization for approval of exempt and non-exempt research activities that involve human subjects. The IRB must be currently registered with OHRP that is linked to the engaged organization. Organizations that do not have an IRB must demonstrate the ability to expeditiously contract with a commercial IRB to conduct a review of the proposed activities. Also, all engaged organizations must possess a currently valid Federal wide Assurance (FWA) on file from OHRP. The NIST IRB is unable to serve as the IRB for financial assistance recipients.

The NIST Research Protections Office (RPO) reserves the right to conduct an administrative review of all applications that potentially include research involving human subjects and were approved by an authorized non-NIST institutional entity (an IRB or entity analogous to the NIST RPO) under 15 C.F.R. [§ 27.112](#) (Review by Institution). Conducting an “administrative review” means that the NIST RPO will review and verify the performing institution’s determinations made under the Common Rule and all documentation that support such determinations.

All applications involving human subjects research must clearly indicate, by separable task, all research activities believed to be exempt or non-exempt research involving human subjects, the expected institution(s) where the research activities involving human subjects may be conducted, and the institution(s) expected to be engaged in the research activities. Some documents may be requested for a pre-review during the proposal review process; however, the Grants Officer may allow final versions of certain required documents to be produced at an appropriate designated time post-award. If an award is issued, no research activities involving live vertebrate animals shall be initiated or costs incurred for those activities under the award until the NIST Grants Officer issues written approval. In addition, all re-approvals, amendments, modifications, changes, annual reports and closure will be reviewed by NIST.

This summary and the information provided here <https://www.nist.gov/oaam/nist-notice->

[funding-opportunity-requirements-human-subjects-and-live-vertebrate-animal](#) reflect the existing NIST policy and requirements for Research Involving Human Subjects. Should the policy be revised prior to award, a clause reflecting the policy current at time of award may be incorporated into the award. If the policy is revised after award, a clause reflecting the updated policy may be incorporated into the award.

For more information regarding research projects involving human subjects, contact Anne Andrews, Director, NIST Research Protections Office (e-mail: [anne.andrews@nist.gov](mailto:anne.andrews@nist.gov); phone: (301) 975-5445).

#### **2.04 Research Activities Involving Live Vertebrate Animals or Pre-Existing Cell Lines/Tissues From Vertebrate Animals**

This section summarizes the requirements for applications that potentially involve research involving live vertebrate animals or pre-existing cell lines or tissues from vertebrate animals. Additional information that describes the NIST review process for such applications and provides details regarding the documentation required is available here: <https://www.nist.gov/oaam/nist-notice-funding-opportunity-requirements-human-subjects-and-live-vertebrate-animal>. Both this summary and the additional information provided at the link will be incorporated into any award made under this NOFO.

Any application that proposes research activities involving live vertebrate animals that are to be cared for, euthanized, or used by award recipients to accomplish research goals, teaching, or testing must meet the requirements of the Animal Welfare Act (AWA) ([7 U.S.C. § 2131](#) et seq.), and the AWA final rules (9 C.F.R. Parts [1](#), [2](#), and [3](#)), and if appropriate, the Good Laboratory Practice for Nonclinical Laboratory Studies ([21 C.F.R. Part 58](#)). In addition, such research activities should be in compliance with the [“U.S. Government Principles for Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training”](#) (Principles).

NIST reserves the right to conduct an administrative review of all applications that potentially include research activities that involve live vertebrate animals, or custom samples from, or field studies with live vertebrate animals. Conducting an “administrative review” means that the NIST RPO will review and verify the performing institution’s determinations made under the applicable legal and policy requirements and all documentation that support such determinations. Some documents may be requested for a pre-review during the proposal review process; however, the Grants Officer may allow



final versions of certain required documents to be produced at an appropriate designated time post-award. If an award is issued, no research activities involving live vertebrate animals shall be initiated or costs incurred for those activities under the award until the NIST Grants Officer issues written approval. In addition, all re-approvals, amendments, modifications, changes, annual reports, and closure will be reviewed by NIST.

The applicant should clearly indicate in the application, by separable task, all research activities believed to include research involving live vertebrate animals and the institution(s) where the research activities involving live vertebrate animals may be conducted. In addition, the applicant should indicate any activity/task that involves an excluded or custom collection from vertebrate animals, or a field study with animals.

This summary and the information provided here <https://www.nist.gov/oaam/nist-notice-funding-opportunity-requirements-human-subjects-and-live-vertebrate-animal> reflect the existing NIST policy for Research Involving Live Vertebrate Animals. Should the policy be revised prior to award, a clause reflecting the policy current at time of award may be incorporated into the award. If the policy is revised after award, a clause reflecting the updated policy may be incorporated into the award.

For more information regarding research projects involving live vertebrate animals, contact Anne Andrews, Director, NIST Research Protections Office (e-mail: [anne.andrews@nist.gov](mailto:anne.andrews@nist.gov); phone: 301-975-5445).

### **2.05 Certifications Regarding Federal Felony and Federal Criminal Tax Convictions, Unpaid Federal Tax Assessments and Delinquent Federal Tax Returns**

In accordance with Federal appropriations law, an authorized representative of the selected applicant(s) may be required to provide certain pre-award certifications regarding federal felony and federal criminal tax convictions, unpaid federal tax assessments, and delinquent federal tax returns.

## **3.0 APPLICATION PREPARATION INSTRUCTIONS AND REQUIREMENTS**

### **3.01 Phase II Application Requirements**

**Only FY 2022 NIST SBIR Phase I awardees are eligible to submit FY 2023 Phase II applications in response to this NOFO. Phase I applications are not being accepted at**

**this time.**

The application must provide sufficient information to demonstrate that the proposed work represents a sound approach to the investigation of an important scientific or engineering innovation worthy of support. The application must sufficiently identify and address a specific NIST technical program area that falls within one of the research areas described in Section 9.0 or a NIST-patented technology available for licensing. The research area or NIST-patented technology must be the same as identified in Phase I. The research must be directed towards development of a commercial product or service in the NIST program area. The application must be self-contained and written with all the care and thoroughness of a scientific paper submitted for publication. It should indicate a thorough knowledge of the current status of research area addressed by the application. Each application should be checked carefully by the applicant to ensure inclusion of all essential material needed for a complete evaluation (see Sections 4.02 and 8.01).

The application must serve as the basis for technological innovation and lead to a new commercial product, process, or service that benefits the public.

NIST reserves the right to not submit an application for merit review if NIST determines that the application fails to comply with the administrative procedures as outlined in the applicable Screening Criteria in Section 4.02 or is missing any of the required forms and documents listed in Section 8.01.

### **3.01.01 SBA Data Collection Requirement**

All applicants are required to provide certain information for inclusion into SBA's SBIR.gov database by completing the Company Commercialization Report (CCR). The CCR allows applicants to report funding outcomes resulting from prior SBIR and STTR awards. SBIR and STTR awardees are required by the SBIR Policy Directive to update and maintain their organization's CCR at [www.SBIR.gov](http://www.SBIR.gov).

Each Phase II awardee is required to update appropriate information on the award in the database upon completion of the last program objective under the funding agreement and is requested to voluntarily update the information in the database annually thereafter for a minimum period of 5 years.

Applicants shall complete the CCR by logging into their company's existing account or register for a new account at [www.SBIR.gov](http://www.SBIR.gov). Instructions for applicants to complete and include the CCR with its application are listed below.

1. Log into [www.SBIR.gov](http://www.SBIR.gov).
2. Use the Login/Register prompt at the top of the home page to login to your existing account or to register and create a new account.
3. Navigate to My Dashboard > My Documents to view or print the information currently contained in the Company Registry Commercialization Report.
4. Create or update the commercialization record from the company dashboard by scrolling to the "My Commercialization" section, and clicking the create/update Commercialization tab under "Current Report Version." Please refer to the "Instructions" and "Guide" documents contained in this section of the Dashboard for details on completing and updating the CCR. Ensure the report is certified and submitted.
5. Click the "Company Commercialization Report" PDF under the My Documents section of the dashboard to download a PDF of the CCR.
6. Submit your CCR along with the proposal documents listed in Section 8.01, Required Forms and Documents of this NOFO.

### 3.02 Phase II Application

A complete application must include a Technical Proposal (described below) and all other forms and documents listed in Section 8.01.

The Cover Sheet (a) and Technical Content (b) of the Technical Proposal is **limited to 15 pages**. Additional pages beyond the 15-page limit will not be considered in the evaluation process. The Commercialization Plan (c) and Phase I Final Report (d) are not included in the page count. Pages should be of standard size (8 1/2" x 11"; 21.6 cm x 27.9 cm) with margins of 2.5 cm and type at least 10-point font. All units of measurement should be presented in metric units.

**The Technical Proposal portion of the application requires the following:**

- (a) Cover Sheet (3.02.01) pages 1 and 2,**
- (b) Technical Content (3.02.02) pages 3 through 15,**
- (c) Commercialization Plan (3.02.03), and**
- (d) Phase I Final Report (3.02.04).**

**The listing of all forms and documents needed to complete the application is given in Section 8.01 of this NOFO.** The additional required forms and documents in Section 8.01 are not included in the 15-page count.

See Section 6.0 for information on the submission of applications in response to this NOFO.

### **3.02.01 Cover Sheet**

A completed Cover Sheet (see Appendix A of this NOFO) is a required part of the Technical Proposal. The Cover Sheet is counted as pages 1 and 2 of the Technical Proposal.

If an applicant checks ‘Yes’ on #11, the applicant’s contact information will be provided to the NIST Hollings Manufacturing Extension Partnership (MEP). Such applicants may be contacted by your local MEP Center to explore a wide range of services and initiatives to help identify potential opportunities to accelerate and strengthen growth and competitiveness in the global marketplace for small and medium-sized manufacturers, including business-related support services that could potentially benefit the applicant’s proposed project.

The applicant must provide in the space available on the Cover Sheet an abstract (limited to 200 words) and summary of potential commercial application of the research results (limited to 100 words). Each applicant’s abstract and summary of potential commercial applications will be provided to the SBA and should not contain proprietary information. Each awardee’s abstract and summary of potential commercial applications will be published on the [NIST SBIR website](#) and [www.sbir.gov](http://www.sbir.gov).

### **3.02.02 Technical Content**

Beginning on page 3 of the Technical Proposal, include the following items with headings as shown:

**(1) Identification and Significance of the Problem or Opportunity.** Make a clear statement of the specific research problem or opportunity addressed, its innovativeness, commercial potential, and why the research is important. Explain how it applies to the specific research area in Section 9 that was utilized in Phase I.

**(2) Phase II Technical Objectives.** State the specific objectives of the Phase II effort,

including the technical questions it will try to answer, to determine the feasibility of the proposed approach.

**(3) Phase II Work Plan.** Include a detailed description of the Phase II research plan. The plan should indicate what will be done, where it will be done, and how the research will be carried out. The method(s) planned to achieve each objective or task should be discussed in detail.

**(4) Related R/R&D.** Describe significant R/R&D that is directly related to the application, including any conducted by the principal investigator or by the proposing SBC. Describe how it relates to the proposed effort and describe any planned coordination with outside sources. The applicant must persuade evaluators of his or her awareness of key, recent R/R&D conducted by others in the specific topic area.

**(5) Key Individuals and Bibliography of Related Work.** Identify key individuals involved in Phase II, including their related education, experience, and publications. Where vitae are extensive, summaries that focus on the most relevant experience and publications are desired and may be necessary to meet application size limitations.

**(6) Relationship with Future R/R&D.** Discuss the significance of the Phase II effort in providing a foundation for the Phase III R/R&D effort. Also state the anticipated commercial results of the proposed approach.

**(7) Facilities and Equipment.** A description, availability, and location of instrumentation and physical facilities proposed for Phase II should be provided.

**(8) Consultants, Contracts, and Subawards.** The purpose of this section is to show that any third-party research assistance would materially benefit the proposed effort and that arrangements for such assistance are in place at time of application submission.

For Phase II, a minimum of one-half of the research and/or analytical effort must be performed by the awardee. Outside involvement in the project is encouraged where it strengthens the conduct of the research. Outside involvement is not a requirement of this program and is limited to no more than one-half of the research and/or analytical

effort in Phase II. The total cost for all consultant fees, facility leases, usage fees, and other subcontract/subaward or purchase agreements, excluding funds requested for TABA – see Section 5.12 – may not exceed one-half of the total award.

No individual or entity may serve as consultant, contractor, or subrecipient if they have been the recipient of any NIST information related to the research area that is not generally available to the public.

The applicant must also include Letters of Commitment from any participating consultants, subrecipients, or subcontractors. The Letters of Commitment do not count against the page limit. See Section 8.01.16.

**(9) Cooperative Research and Development Agreements (CRADA).** State if the applicant is a former or current CRADA partner with NIST, or with any other Federal agency, naming the agency, title of the CRADA, and any relationship with the proposed work. The statement of work of an SBIR award awarded under this NOFO cannot overlap with the statement of work of an applicant's existing CRADA with any federal agency, including NIST. NIST will consider whether there is any overlap on a case by case basis.

**(10) Guest Researcher.** State if any of the applicant's employees, consultants, contractors, or subrecipients or their employees is a [domestic or foreign guest researcher](#) at NIST, naming the sponsoring laboratory.

**(11) Cost Sharing.** Cost sharing is not required and is not considered during the evaluation process for Phase II applications.

**(12) Similar Applications or Awards. WARNING** -- While it is permissible to submit identical applications or applications containing a significant amount of essentially equivalent work for consideration under numerous Federal program funding announcements, **it is unlawful to enter into a funding agreement requiring essentially equivalent work to an SBIR award (see 15 U.S.C. § 638(bb)(3)).** If there is any question concerning this, it must be disclosed to the soliciting agency or agencies before award.

If an application submitted in response to this NOFO is substantially the same as another application that has been funded, is now being funded, or is pending with another Federal Agency, the applicant must provide the following information:

(a) Names and addresses of agencies to which an application was submitted or from which an award was received.

(b) Date of application submission or date of award.

(c) Title, number, and date of NOFO(s) under which an application was submitted or award received.

(d) Specific applicable research topic(s) for each application submitted or award received.

(e) Title of research projects for each application submitted or award received.

(f) Name and title of principal investigator or project manager for each application submitted or award received.

If no equivalent application is under consideration or award for equivalent work received, a statement to that effect **must** be included in this section of the technical content area of the application.

**(13) Prior SBIR Phase II Awards.** If the SBC has received more than 15 Phase II awards in the prior 5 fiscal years, the SBC must submit the following information in its Phase II application: name of the awarding agency; date of award; funding agreement number; amount of award; topic, subtopic, or research area title; follow-on agreement amount; source and date of commitment; and current commercialization status for each Phase II award. This required information will not be counted toward the 15-page Technical Proposal limitation.

### 3.02.03 Commercialization Plan

Attach a copy of your commercialization plan that follows the guidelines below.

An important criterion for selection of NIST Phase II awards is the potential for commercial applications of the research, as evidenced by one or more of the following:

- The SBC's record of commercializing SBIR and other research;

- The existence of Phase III follow-on funding commitments from the private sector or non-SBIR Government funding sources; and
- Other indicators of the concept's commercial potential.

There are no page limits (upper or lower) for the commercialization plan because each project is distinct and each company's vision for deploying its technology into the marketplace is unique.

The commercialization plan should provide information directly related to bringing the anticipated research results to market. For more information on preparing a commercialization plan, please visit the Small Business Administration website, Writing a Business Plan: <https://www.sba.gov/business-guide/plan-your-business/write-your-business-plan>. The commercialization plan should indicate how the Phase II research results are to be carried out in Phase III and should address the following areas:

**Company Information** – Focused objectives/core competencies; specialization area(s); products with significant sales, and history of previous Federal and nonfederal funding, regulatory experience, and subsequent commercialization.

**Commercial Applications** - A clear description of the product/service/process you plan on providing as a result of your Phase II research and the potential commercial application or use.

**Customers and Competition** – Clear description of key technology objectives, current competition, and advantages compared to competing products or services; description of hurdles to acceptance of the innovation.

**Market** – Milestones, target dates, analyses of market size, and estimated market share after first year sales and after 5 years, explanation of plan to obtain market share.

**Intellectual Property** – Patent status, technology lead, trade secrets, or other demonstration of a plan to achieve sufficient protection to realize the commercialization state and attain at least a temporal competitive advantage.

**Financing** – Plans for securing necessary funding in Phase III.



**Assistance and Mentoring** - Plans for securing needed technical or business assistance through mentoring, partnering, or through arrangements with state assistance programs, Small Business Development Centers (SBDCs), Hollings Manufacturing Extension Partnership Centers, or other assistance providers.

Each SBC applying for a Phase II award is required to update its Commercialization information on [www.SBIR.gov](http://www.SBIR.gov) for all of its prior Phase II awards.

#### **3.02.04 Phase I Final Report**

Attach a copy of your Phase I Final Report. The Phase I Final Report does not count toward the Technical Proposal's 15 page limit.

## **4.0 METHOD OF SELECTION AND EVALUATION CRITERIA**

### **4.01 Introduction**

All applications will be evaluated and judged on a competitive basis. Applications will be initially screened to determine eligibility, completeness, and responsiveness to this NOFO (see Sections 4.02 and 8.01). Applications passing the initial screening will be evaluated in accordance with the evaluation criteria (see Section 4.03). Each application will be judged on its own merit.

NIST is under no obligation to fund any application or any specific number of applications in a given topic. NIST may elect to fund several or none of the applications for the same research area. If an application is submitted that requires a license to use a NIST-owned invention covered by a patent or patent application and such NIST-owned invention has become unavailable for licensing prior to the close of this NOFO in the field of use relevant to the application, NIST has the sole discretion to deem the application ineligible.

### **4.02 Phase II Screening Criteria**

Please carefully read the entire NOFO and review the following Phase II Screening Criteria to ensure that your application meets NIST requirements. Phase II applications that do not clearly satisfy all seven (7) of the screening criteria will be eliminated from the review and selection process and not receive further consideration. However, NIST, in its sole

discretion, may continue the review process for an application that is missing minor non-substantive information, the absence of which may easily be rectified.

The screening criteria are:

(1) The application must be received by NIST before the deadline specified in Section 6.01.

(2) The proposing firm must qualify as eligible according to the criteria provided in Section 1.03.

(3) The Phase II application must include all required forms and documents listed in Section 8.01:

- i) SF-424 (R&R), Application for Federal Assistance
- ii) Research and Related Budget (Total Fed + Non-Fed)
- iii) CD-511, Certification Regarding Lobbying
- iv) Research and Related Other Project Information
- v) SF-LLL – Disclosure of Lobbying Activities (if applicable)
- vi) Technical Content – see Section 3.02
  - a. Cover Sheet – see Section 3.02.01
  - b. Technical Proposal – see Section 3.02.02
  - c. Commercialization Plan – see Section 3.02.03
  - d. Phase I Final Report – see Section 3.02.04
- vii) Budget Narrative and Justification – see Section 8.01.7
- viii) Indirect Cost Rate Agreement – see Section 8.01.8
- ix) SBA Company Registry Form – see Section 8.01.9
- x) Data Management Plan -see Section 8.01.10
- xi) Subaward Budget Form - see Section 8.01.11
- xii) Research and Related Personal Data – see Section 8.01.12
- xiii) Current and Pending Support Form – see Section 8.01.13
- xiv) Compliance with SBIR Program Requirements, Applicant Fraud Awareness Training – Certificate of Training Completion – see Section 8.01.14
- xv) Letters of Commitment – see Section 8.01.15
- xvi) Company Commercialization Report (CCR) – see Section 8.01.16

(4) The Technical Content must not exceed 15 pages.

(5) The Phase II total proposed project budget must not exceed \$400,000. Up to \$50,000 of the award may be requested for TABA. NIST's inclusion of TABA funds in the award will be subject to the availability of NIST funding. For Phase II, a minimum of one-half of the research and/or analytical effort must be performed by the awardee. The total cost for all consultant fees, facility leases, usage fees, and other subcontract/subaward or purchase agreements, excluding funds requested for TABA – see Section 5.12 – may not exceed one-half of the total award (Section 1.03).

(6) The duration of R/R&D for the Phase II project must not exceed 24 months.

(7) If an application is submitted that requires a license to use a NIST-owned invention covered by a patent or patent application, the relevant NIST-owned invention must be available for licensing prior to the close of this NOFO in the field of use relevant to the application.

#### 4.03 Phase II Evaluation Criteria

Phase II applications that satisfy the screening criteria in Section 4.02 will proceed to a scored merit review process.

**Merit Review.** The applications will be evaluated by at least three (3) independent, objective reviewers composed of NIST staff or non-federal personnel in accordance with the following equally-weighted criteria for a maximum of 100 points. Reviewers may discuss the applications with each other, but scores will be determined on an individual basis, not as a consensus. The reviewers will evaluate:

(1) The soundness of the technical approach to the proposed research.

(2) The likelihood the proposed effort will yield significant results leading to a product within the technical area as described in the commercialization plan.

(3) The likelihood the proposed approach will contribute to the field of study in the technical area.

(4) Qualifications of the proposed principal/key investigators, supporting staff, and consultants as they relate to accomplishing the proposed research effort.

Applicants should be specific and clear when writing their applications and not assume information not clearly spelled out can be inferred by the reviewer. No technical clarifications may be made after application submission.

#### **4.04 Phase II Award Selections**

Final selection decisions will be made by the Selecting Official, the Director of the NIST Technology Partnerships Office, or designee.

The Selecting Official shall select awards in rank order unless a selection out of rank order is justified based upon any of the following factors:

- (1) Diversity across NIST program areas;
- (2) Proposed projects that include SBIR high priority areas of manufacturing and energy efficiency research;
- (3) Proposed projects that include participation by women and socially and economically disadvantaged SBCs, and SBCs from HUBZones or underserved-states;
- (4) Possible duplication of other federally-funded research; and
- (5) Availability of funding.

NIST may select some, all, or none of the applications, or part(s) of any particular application. Prior to issuing an award, NIST may ask for supplemental information and may negotiate the scope and amount of the award. The final approval of selected applications and issuance of awards will be by the NIST Grants Officer. The award decisions of the NIST Grants Officer are final.

##### **4.04.01 Federal Awarding Agency Review of Risk Posed by Applicants**

After applications are proposed for funding by the Selecting Official, the NIST Grants Management Division (GMD) performs pre-award risk assessments in accordance with 2 C.F.R. § 200.206 which may include a review of the financial stability of an applicant, the quality of the applicant's management systems, the history of performance, and/or the applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities.

In addition, prior to making an award where the total Federal share is expected to exceed the simplified acquisition threshold (currently \$250,000), NIST GMD will review and consider the publicly available information about that applicant in the Federal Awardee Performance and Integrity Information System (FAPIIS). An applicant may, at its discretion, review and comment on information about itself previously entered into FAPIIS by a Federal awarding

agency. As part of its review of risk posed by applicants, NIST GMD will consider any comments made by the applicant in FAPIIS in making its determination about the applicant's integrity, business ethics, and record of performance under Federal awards.

Upon completion of the pre-award risk assessment, the Grants Officer will make a responsibility determination concerning whether the applicant is qualified to receive the subject award and, if so, whether appropriate specific conditions that correspond to the degree of risk posed by the applicant should be applied to an award.

#### 4.04.02 Release of Proposal Review Information

After final award decisions have been announced, the merit evaluations of applications that passed the screening criteria will be provided to the applicant with written notification of award/non-award. The identity of the reviewers will not be disclosed.

## 5.0 CONSIDERATIONS

### 5.01 Awards

Review of applications, selection of successful applicants, and award processing is expected to be completed by September 2023. The earliest start date for awards under this NOFO is expected to be September 2023.

Through [2 C.F.R. § 1327.101](#), the Department of Commerce adopted **Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards** at [2 C.F.R. Part 200](#), which apply to awards in this program

The Department of Commerce will apply to all awards made under this NOFO the **Financial Assistance Standard Terms and Conditions** in effect on the date of award. The current version, dated November 12, 2020, is accessible at [Department of Commerce Financial Assistance Standard Terms and Conditions](#).

The **Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements**, [79 FR 78390](#) (December 30, 2014), are applicable to this NOFO.

Contingent upon availability of funds, NIST anticipates making a total number of approximately five (5) Phase II awards with a project budget of no more than \$400,000 each.

Of this amount, up to \$50,000 may be included in each application for TABA. NIST's inclusion of TABA funds in the award will be subject to the availability of NIST funding. The total performance period shall be no more than 24 months beginning on the agreement start date. A period of one (1) month is allotted after the 24-month R&D duration for the awardee to prepare and submit a final report. One year after completing the R&D activity, the awardee shall be required to report on its commercialization activities.

The funding vehicles for NIST's SBIR program in both Phase I and Phase II are cooperative agreements.

To provide for an in-depth review of the Phase I final report and the Phase II application, Phase II awards will be made approximately 6 months after the completion of Phase I, contingent upon availability of funds.

In no event will NIST or the Department of Commerce be responsible for application preparation costs. This NOFO does not obligate NIST or the Department of Commerce to make any awards under either Phase I or Phase II. Furthermore, NIST will not fund any costs incurred by the applicants before awards are made. Publication of this NOFO does not oblige NIST or the Department of Commerce to award any specific project or to obligate any available funds.

## 5.02 Reporting Requirements

Phase II awardees will be required to submit Research Performance Progress Reports (RPPR) including a final report. RPPRs are generally due 30 days after the end of the 6<sup>th</sup>, 12<sup>th</sup>, 18<sup>th</sup>, and 24<sup>th</sup> month of the period of performance. Publication citation information as well as links to publicly available data or revised Data Management Plans (DMPs) shall be submitted as soon as they become available.

The RPPR should include a response to each of the metric questions that address the technical details regarding the research conducted up to that point in the project, detailed plans for the next stages of the project, results obtained, estimates of technical feasibility, a description of TABA services provided, and the benefits and results of TABA services provided for those awardees who requested and were approved for TABA services.

Consideration will be given to changes from the solicited and proposed milestones if

results from experimentation warrant a deviation from the plan. Inclusion of proprietary information within the RPPRs may be necessary in order to effectively communicate progress and gain appropriate consultation from NIST experts regarding next steps. All such proprietary information must be marked by the awardee according to instructions provided in Section 5.04.01.

To help assess the effectiveness of our program in meeting programmatic and SBIR objectives, NIST may periodically request information from small businesses about progress taken towards commercialization of the technology after the completion of Phase I and II awards.

### **5.03 Payment Schedule**

Cooperative agreements will include an award term with electronic payment system information. Pursuant to 2 C.F.R. § 200.305 awardees are to be paid in advance, provided they maintain or demonstrate the willingness to maintain: written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability as established in 2 C.F.R. § 200.302. Advances of funds to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project.

The Department of Commerce policy requires that in the usual case, non-Federal entities time advance payment requests so that Federal funds are on hand for a maximum of 30 calendar days before being disbursed by the non-Federal entity for eligible award costs.

### **5.04 Innovations, Inventions and Patents**

#### **5.04.01 Proprietary Information Contained in Proposals**

Information contained in unsuccessful applications will remain the property of the applicant. Unsuccessful applications will be retained in accordance with the [General Record Schedule 1.2/021](#). The Federal Government may, however, retain copies of all applications. Public release of information in any application submitted will be subject to existing statutory and regulatory requirements. Applicants are discouraged from submitting proprietary information unless the information is deemed essential for proper evaluation of the

application. If proprietary information provided by an applicant in a proposal, which constitutes a trade secret, proprietary commercial or financial information, confidential personal information, or data affecting national security, it will be treated in confidence to the extent permitted by law, provided that the proposal is clearly marked by the applicant as follows:

(A) The following legend must appear on the title page of the proposal:

This proposal contains information that shall not be disclosed outside the Federal Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of this proposal, unless authorized by law. The Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting award if award is made as a result of the submission of this proposal. The information subject to these restrictions are contained on all pages of the proposal except for pages [insert page number or other identification of pages that contain no restricted information.]

(End of Legend); and

(B) The following legend must appear on each page of the proposal that contains information the applicant wishes to protect:

Use or disclosure of information contained on this sheet is subject to the restriction on the title page of this proposal.

The use of any other legend is unacceptable to the Government and may constitute grounds for removing the application from further consideration without assuming any liability for inadvertent disclosure.

#### **5.04.02 Rights in Data Developed Under SBIR Funding Agreements**

In lieu of the [Department of Commerce Financial Assistance Standard Terms and Conditions](#), Section C.03, Intellectual Property Rights, the following terms and conditions will apply to and be included in all SBIR awards issued under this NOFO:

(a) Definitions. All definitions below are excerpted from the [SBA SBIR/STTR Policy Directive](#).



(1) Computer Database. A collection of data recorded in a form capable of being processed by a computer. The term does not include Computer Software.

(2) Computer Programs. A set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) Government Purpose. Any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States 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.

(8) 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).

(9) 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 Government. The Federal Government may exercise SBIR/STTR Computer Software Rights within the Government for:

(i) Use in Federal 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 § 3(ee) of the SBIR/STTR Policy Directive 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 Federal 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.

(2) The Federal 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 Federal 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 § 8 of the SBIR/STTR Policy Directive; and

(ii) The release or disclosure is—

(A) To a Federal Government support service contractor or their subcontractor for purposes of supporting Government internal 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 § 3(ee) of the SBIR/STTR Policy Directive; 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.

(10) 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.

(11) SBIR/STTR Data Rights. The Federal Government's license rights in properly marked SBIR/STTR Data during the SBIR/STTR Protection Period are 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 Federal 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 Federal Government receives Unlimited Rights in Form Fit, and Function Data, OMIT Data, and all unmarked SBIR/STTR Data.

(12) SBIR/STTR Protection Period. The period of time during which the Federal 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 § 8(b)(4) of the SBIR/STTR Policy Directive).

(13) 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 Federal Government may, use, modify, reproduce, perform, display, release, or disclose SBIR/STTR Data that are Technical Data within the Government; however, the Government shall not use, release, or disclose the data for procurement, manufacturing, or commercial purposes; or release or disclose the SBIR/STTR Data outside the Government except as permitted by paragraph (B) 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 § 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 § 3(ii) of the SBIR/STTR Policy Directive, 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.

(14) 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.

(15) Unlimited Rights. The Government's rights to access, 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.

(b) Allocation of SBIR/STTR Data Rights.

(1) An SBC retains ownership of all SBIR/STTR Data it develops or generates in the performance of an SBIR/STTR award. The SBC retains all rights in SBIR/STTR Data that are not granted to the Federal Government in accordance with the SBIR/STTR Policy Directive. These rights of the SBC do not expire.

(2) During the SBIR/STTR Protection Period, the Federal Government receives SBIR/STTR Technical Data Rights in appropriately marked SBIR/STTR Data that is Technical Data or any other type of Data other than Computer Software; and SBIR/STTR Computer Software Rights in appropriately marked SBIR/STTR Data that is Computer Software.

(3) After the protection period, the Federal Government may use, and authorize others to use on its behalf, for Government Purposes, SBIR/STTR Data that was protected during the SBIR/STTR Protection Period. Awards issued by the U.S. Department of Energy are subject to Unlimited Rights after the expiration of the SBIR/STTR Protection Period.

(4) The Federal Government receives Unlimited Rights in Form Fit, and Function Data, OMIT Data, and all unmarked SBIR/STTR Data.

(c) Identification and Delivery of SBIR/STTR Data. Any SBIR/STTR Data delivered by the Awardee, and in which the Awardee intends to limit the Federal Government's rights to

SBIR/STTR Data Rights, must be delivered with restrictive markings. The Federal Government assumes no liability for the access, use, modification, reproduction, release, performance, display, disclosure, or distribution of SBIR/STTR Data without markings. The Awardee or its subcontractors or suppliers shall conspicuously and legibly mark all such SBIR/STTR Data with the appropriate legend.

(1) The authorized legend shall be placed on each page of the SBIR/STTR Data. If only portions of a page are subject to the asserted restrictions, the SBIR/STTR Awardee shall identify the restricted portions (e.g., by circling or underscoring with a note or other appropriate identifier). With respect to SBIR/STTR Data embodied in Computer Software, the legend shall be placed on: (1) the printed material or media containing the Computer Software; or (2) the transmittal document or storage container. The legend shall read as follows:

“SBIR/STTR DATA RIGHTS

|                             |  |
|-----------------------------|--|
| Funding Agreement No.       |  |
| Award Date                  |  |
| SBIR/STTR Protection Period |  |

|                           |  |
|---------------------------|--|
| SBIR/STTR Awardee         |  |
| SBIR/STTR Awardee Address |  |

This is SBIR/STTR Data (or is Computer Software or a Prototype that embodies or includes SBIR/STTR Data) to which the SBIR/STTR Awardee has SBIR/STTR Data Rights and to which the Federal Government has received SBIR/STTR Technical Data Rights (or SBIR/STTR Computer Software Rights) during the SBIR/STTR Protection Period and rights of use for Government Purposes after the SBIR/STTR Protection Period, as those terms are defined in the SBIR/STTR Funding Agreement. Awards issued by the U.S. Department of Energy are subject to Unlimited Rights after the SBIR/STTR Protection Period, as that term is defined in the SBIR/STTR Funding Agreement. Any reproduction of SBIR/STTR Data or portions of such data marked with this legend must also reproduce the markings.”

(End of Legend)

(2) Data submitted without correct or appropriate markings may be corrected within 6 months from the date the data is delivered.

(d) Relation to patents. Nothing regarding SBIR/STTR Data Rights in this clause shall imply a license to or imply a requirement to license to the Federal Government any patent to a Subject Invention (as defined under the Bayh-Dole Act implemented at 37 CFR 401) made under an SBIR/STTR award.

(e) *Copyright.*

(1) *Data first produced in the performance of this award.*

(i) Except as otherwise specifically provided in this award, the Awardee may assert copyright subsisting in any data first produced in the performance of this award.

(ii) When asserting copyright, the Awardee shall affix the applicable copyright notice of 17 U.S.C. § 401 or § 402 and an acknowledgment of Government sponsorship (including award number).

(iii) For data other than computer software, the Awardee grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Awardee grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

(2) *Data not first produced in the performance of this award.* The Awardee shall not, without prior written permission of the Grants Officer, incorporate in data delivered under this award any data that are not first produced in the performance of this award unless the Awardee: (i) identifies such data; and (ii) grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause.

(3) *Removal of copyright notices.* The Government will not remove any copyright notices placed on data pursuant to this paragraph (c) and will include such notices on all reproductions of the data.

(End of Clause)

#### **5.04.03 NIST-Owned Inventions**

Awardees will not have any automatic rights to make, use, or sell products or services incorporating NIST-owned inventions. For any SBIR award that requires a license to use a NIST-owned invention covered by a patent or patent application, the SBIR awardee will be required to contact NIST's Technology Partnerships Office for a patent license for research or for commercial use.

To the extent that such NIST-owned invention is available for licensing and has not otherwise been exclusively licensed to another party, the SBIR awardee will be granted a non-exclusive research license and will be given the opportunity to negotiate a non-exclusive or an exclusive commercialization license to the NIST-owned invention, in accordance with the Federal patent licensing regulations, set forth in 37 C.F.R. Part 404.

#### **5.04.04 Patent Rights**

Normally, SBCs may retain worldwide patent rights to any invention developed with Federal support. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from Federal awards are described in more detail in 37 C.F.R. Part 401, which implements 35 U.S.C. § 202 through 204 and includes standard patent rights clauses in 37 C.F.R. § 401.14, which are incorporated by reference into all awards.

#### **5.04.05 Invention Reporting**

SBIR awardees must report inventions to the NIST SBIR Program Office within 2 months of the inventor's report to the awardee. Inventions must also be reported through the iEdison Invention Reporting System at [www.iedison.gov](http://www.iedison.gov).

#### **5.05 Cost Sharing**

Cost sharing is permitted for applications under this program NOFO; however, cost sharing is not required and will not be considered in evaluation of applications.

#### **5.06 Profit or Fee**

A reasonable profit or fee not to exceed 7% of the sum of the direct and indirect costs is allowed.



### 5.07 Joint Ventures or Limited Partnerships

Joint ventures and limited partnerships are eligible provided the entity created qualifies as an SBC as defined in this NOFO.

### 5.08 Research and Analytical Work

For Phase II, a minimum of one-half of the research and/or analytical effort, per Section 1.03, must be performed by the proposing SBC. The total cost for all consultant fees, facility leases, usage fees, and other subcontract/subaward or purchase agreements, excluding funds requested for TABA – see Section 5.12 – may not exceed one-half of the total award.

### 5.09 Awardee Commitments

Upon award of a funding agreement, the awardee will be required to make certain legal commitments through acceptance of numerous Specific Award Conditions (SAC) in the funding agreement. Awards also will be governed by the Department of Commerce Financial Assistance Standard Terms and Conditions (November 12, 2020 or successor version); the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. Part 200, adopted by the Commerce Department through 2 C.F.R. § 1327.101; and the Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, 79 FR 78390 (December 30, 2014).

Section 5.10 describes the types of terms and conditions to which the awardee would commit. This list is not a complete list of terms and conditions to be included in Phase I and Phase II funding agreements and is not the specific wording of such terms and conditions.

### 5.10 Summary Statements

The following statements apply to Phase I and Phase II awards and are examples of some of the topic areas that will be addressed in the award terms and conditions.

(1) Access to Records. Government officials have the right of timely and unrestricted access to records of awardees, including access to personnel for discussion related to the records. See [2 C.F.R. § 200.337](#).

**(2) Termination.** Awards may be terminated (a) by the NIST Grants Officer, if an awardee materially fails to comply with the terms and conditions of an award; (b) by the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities; (c) by the NIST Grants Officer with the consent of the awardee, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; (d) by the awardee upon sending to the NIST Grants Officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. See 2 C.F.R. §§ 200.339-343.

**(3) Non-Discrimination.** The awardee will be required to comply with statutory and other non-discrimination requirements. No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. See Section G.02 of the [Department of Commerce Financial Assistance Standard Terms and Conditions](#) (November 12, 2020).

**(4) Audit Requirements.** Government officials may conduct an audit of an award at any time. Unless otherwise specified in the award, for-profit organizations that expend \$750,000 or more in Department of Commerce funds during their fiscal year must have an audit conducted for that year in accordance with Section D.01.c of the [Department of Commerce Financial Assistance Standard Terms and Conditions](#) (November 12, 2020).

**(5) Codes of Conduct.** Pursuant to Section F.01 of the [Department of Commerce Financial Assistance Standard Terms and Conditions](#) (November 12, 2020), the awardee must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of the award.

**(6) Officials Not To Benefit.** No Federal Government official may benefit personally, to include financial and/or profession gain, from the SBIR/STTR Funding Agreement.

**(7) Duplication of Effort.** The funding agreement shall not support the duplication of other federally-funded research.

(8) Scheduling and Use of Federal Agency Facilities and Equipment. The Awardee must schedule, reserve, and complete usage within the period of performance of the Funding Agreement.

### 5.11 Additional Information

This NOFO reflects current planning. If there is any inconsistency between the information contained herein and the terms of any resulting SBIR funding agreement, the terms of the funding agreement are controlling.

Before award of a SBIR funding agreement, the Government may request the applicant to submit certain organizational, management, personnel, and financial information to assure responsibility of the applicant.

The Government is not responsible for any funds expended by the applicant before award of any funding agreement.

This program NOFO is not an offer by the Government and does not obligate the Government to make any specific number of awards. Also, awards under the SBIR Program are contingent upon the availability of funds.

The SBIR Program is not a substitute for existing unsolicited application mechanisms. Unsolicited applications will not be accepted under the SBIR Program in either Phase I or Phase II.

If an award is made pursuant to an application submitted under this SBIR Program NOFO, a representative of the awardee will be required to certify that the concern has not previously been, nor is currently being, paid for essentially equivalent work by any Federal agency.

The responsibility for the performance of the principal investigator, and other employees or consultants who carry out the proposed work, including those of subrecipients or contractors, lies with the management of the organization receiving an award.

Safety is a top priority at NIST. Employees and affiliates of award recipients who conduct project work at NIST will be expected to be safety-conscious, to attend NIST safety training, and to comply with all NIST safety policies and procedures, and with all applicable terms of

their guest research agreement.

### **5.12 Technical and Business Assistance (TABA)**

NIST is committed to the goal of commercialization of the results of SBIR projects and will provide funding for Technical and Business Assistance (TABA) to Phase I and Phase II awardees as authorized by 15 U.S.C. § 638(q). The NIST TABA program assists in providing funding for the successful commercialization of products, services, or technologies developed in association with the NIST SBIR Program. The NIST TABA program provides funding for guidance and mentoring in topics such as assessing small business commercialization needs; planning, developing, and assisting in the preparation of a commercialization plan; and identifying markets and developing entry strategies. Allowable services include assistance with product sales, intellectual property protections, market research, market validation, and development of regulatory plans and manufacturing plans, or access to technical and business literature available through on-line databases.

Applicants may propose up to \$50,000 of Phase II funding for TABA services. NIST's inclusion of TABA funds in the award will be subject to the availability of NIST funding. Funding for TABA counts toward the maximum \$400,000 award limit. To include TABA services as part of a Phase II award, provide amount and vendor information in the budget justification that demonstrates the provider can provide the services needed and include a letter of commitment from the provider (see Section 8.01 for additional information). NIST may disapprove a proposed TABA provider. TABA requests must be part of the application submission and may not be requested subsequent to award. Reimbursement is limited to services received that comply with 15 U.S.C. § 638(q). Requested TABA funds should be clearly labeled in the Budget Narrative (see Section 8.01.8).

### **5.13 Technical Assistance for Application Preparation and Project Conduct**

Applicants may wish to contact the NIST Hollings Manufacturing Extension Partnership (MEP), a nationwide network of locally managed extension centers whose sole purpose is to provide small- and medium-sized manufacturers with the help they need to succeed. The centers provide guidance to high-technology companies seeking resources and teaming relationships. To be referred to an MEP center for technical assistance, call 1-800-MEP-4-MFG (1-800-637-4634) or visit [MEP's website](#).

MEP Centers are also prepared to provide referrals to state and local organizations offering resources and technical assistance to all NIST SBIR applicants after awards have been announced. If you would like your local MEP Center to contact you, please respond affirmatively to the statement (#11) about MEP on the Cover Sheet.

## 6.0 SUBMISSION OF APPLICATIONS

### 6.01 Deadline for Applications

Phase II applications must be received no later than 11:59 p.m. Eastern Time, June 5, 2023. Only electronic applications submitted via Grants.gov will be accepted.

Applicants should be aware, and factor in their application submission planning, that the Grants.gov system closes periodically for routine maintenance. Applicants should visit [Grants.gov](https://www.grants.gov) for information about any scheduled closures.

Applicants are cautioned to be careful of unforeseen delays that can cause late arrival of applications, with the result that they **will not** be forwarded for evaluation.

Applications not received by the specified due date and time, as recorded by Grants.gov, or that do not adhere to the other requirements of this NOFO (see Section 4.02 Screening Criteria and Section 8.01 Required Forms and Documents) will not be considered.

NIST strongly recommends that applicants do not wait until the last minute to submit an application. NIST will not make allowance for any late submissions. To avoid any potential processing backlogs due to last minute Grants.gov registrations, applicants are highly encouraged to begin their Grants.gov registration process early. No extensions will be granted.

When developing your submission timeline, please keep in mind that (1) all applicants are required to have current registrations in the System for Award Management (SAM.gov) and Grants.gov; (2) the free annual registration process in the electronic System for Award Management (SAM.gov) (see Section 6.03.(1).b) of this NOFO) generally takes between three and five business days but can take more than three weeks; and (3) applicants will receive a series of e-mail messages from Grants.gov over a period of up to two business days before learning whether a Federal agency's electronic system has received its application. **Please note that a federal assistance award cannot be issued if the**

designated recipient's registration in the System for Award Management (SAM.gov) is not current at the time of the award.

Applicants will find instructions on registering with SAM.gov as part of the Grants.gov process at: <http://www.grants.gov/web/grants/applicants/organization-registration.html>.

**NOTE:** As of Monday, April 4, 2022, the federal government stopped using the DUNS number to identify entities. All entities doing business with the federal government must use a Unique Entity Identifier (UEI) generated in [SAM.gov](http://www.sam.gov). Applicants must request and be assigned a UEI number prior to completing the grant application forms and submitting their application via [Grants.gov](http://www.grants.gov). For more information, please see [Planned UEI Updates | GRANTS.GOV](#). The Standard Forms (e.g., SF424, SF424 R&R, etc.) were also updated on April 4, 2022, to allow entities to enter the UEI number. Applicants must use the applicable UEI Forms for all submissions.

## 6.02 Standard Application Package

The standard application package, consisting of the standard forms, i.e., SF-424 (R&R), CD-511, Research and Related Other Project Information, SF-LLL (if applicable), and Research & Related Subaward Budget is available at [www.grants.gov](http://www.grants.gov).

**Please see Section 8.01 for a complete list of required forms and documents.**

## 6.03 Application Submission

Applications must be submitted electronically through Grants.gov at [www.grants.gov](http://www.grants.gov). Paper applications or applications submitted by other electronic means will not be accepted. Supplementary material, revisions, substitutions, audio or video tapes, or computer storage media or devices will **not** be accepted. While applicants may not submit replacement pages or missing documents once an application has been submitted, an applicant may submit a complete, new application including such information by the required deadline. Applications are limited to one proposal per SBC. The last application received in Grants.gov will be used for evaluation.

(1) Applications must be submitted via Grants.gov at [www.grants.gov](http://www.grants.gov), under announcement 2023-NIST-SBIR-02.

a) Applicants should carefully follow specific Grants.gov instructions to ensure the attachments will be accepted by the Grants.gov system. A receipt from Grants.gov indicating an application is received does not provide information about whether attachments have been received. Attachment files names should be kept as short as possible due to potential file corruption after the addition of extensions by Grants.gov. For further information or questions regarding the electronic application process for the 2022-NIST-SBIR-02 announcement, send an e-mail to [grants@nist.gov](mailto:grants@nist.gov).

b) Applicants are strongly encouraged to start early and not wait until the approaching due date before logging on and reviewing the instructions for submitting an application through Grants.gov. The Grants.gov registration process must be completed before a new registrant can apply. If all goes well, the registration process takes three (3) to five (5) business days. If problems are encountered, the registration process can take three (3) weeks or more. Applicants must have a valid unique entity identifier number and must maintain a current registration in the Federal government's primary registrant database, the [System for Award Management](#), as explained on the Grants.gov website. *See also* Section 8.04 of this NOFO. After registering, it may take several days or longer from the initial log-on before a new Grants.gov system user can submit an application. Only authorized individuals(s) will be able to submit an application, and the system may need time to process a submitted application. Applicants should save and print the proof of submission they receive from Grants.gov. If problems occur while using Grants.gov, the applicant is advised to (a) print any error message received and (b) call Grants.gov directly for immediate assistance. If calling from within the United States or from a U.S. territory, please call 800-518-4726. If calling from a place other than the United States or a U.S. territory, please call 606-545-5035. Assistance from the Grants.gov Help Desk will be available around the clock every day, with the exception of Federal holidays. Help Desk assistance will resume at 7:00 a.m. Eastern Time the day after Federal holidays. For assistance using Grants.gov, you may also contact [support@grants.gov](mailto:support@grants.gov).

c) To find instructions on submitting an application on Grants.gov, Applicants should refer to the "Applicants" tab in the banner just below the top of the [Grants.gov](#) homepage. Clicking on the "Applicants" tab produces two exceptionally useful sources of information, Grant Applications and Applicant Resources, which applicants are advised to review.

Applicants will receive a series of e-mail messages over a period of up to two business days

before learning whether a Federal agency's electronic system has received its application. Closely following the detailed information in these subcategories will increase the likelihood of acceptance of the application by the Federal agency's electronic system.

Applicants should pay close attention to the guidance under "Applicant FAQs," as it contains information important to successful submission on Grants.gov, including essential details on the naming conventions for attachments to Grants.gov applications.

The [Grants.gov Online Help](#) site provides vital information on checking the status of applications. See especially the "Check Application Status" option, found by clicking first on Applicants, and then by clicking on Grant Applications.

The application must be both received and validated by Grants.gov. The application is "received" when Grants.gov provides the applicant a confirmation of receipt and an application tracking number. If an applicant does not see this confirmation and tracking number, the application has not been received. After the application has been received, it must still be validated. During this process, it may be "validated" or "rejected with errors." To know whether the application was rejected with errors and the reasons why, the applicant must log in to Grants.gov, select "Applicants" from the top navigation, and select "Track my application" from the drop-down list. If the status is "rejected with errors," the applicant may still seek to correct the errors and resubmit your application before the deadline. If the applicant does not correct the errors, the application will not be forwarded to NIST by Grants.gov.

NIST uses the Tracking Numbers assigned by Grants.gov and does not issue Agency Tracking Numbers.

***Applicants should be aware that adequate time must be factored into applicants' schedules for delivery of their application. Submitters are advised that volume on Grants.gov may be extremely heavy leading up to the deadline date.***

Refer to important information in Section 6.01 Deadline for Applications, to help ensure your application is received on time.

Any amendments to this NOFO will be announced through Grants.gov. Applicants can sign up for Grants.gov NOFO amendments or may request copies from Nicole Berry by e-mail to [nicole.berry@nist.gov](mailto:nicole.berry@nist.gov).



## 7.0 SCIENTIFIC AND TECHNICAL INFORMATION SOURCES

Background information related to the NIST research programs referenced within the research areas may be found within the [NIST website](#). The [NIST Research Library](#), , may also provide valuable scientific and technical information resources. A listing of NIST-developed technologies is available on the [Federal Laboratory Consortium's \(FLC\) website](#).

## 8.0 SUBMISSION FORMS AND CERTIFICATIONS

### 8.01 Required Forms and Documents

Applicants should review the following list carefully to ensure the proposal includes all required forms and documents. **Failure to include any of the applicable listed forms and/or documents will result in rejection of the proposal without consideration.** All required forms and documents must be complete. Please also review Section 4.02 Phase II Screening Criteria. Guidelines provided below are based on frequently asked questions and are not intended to be comprehensive – all forms must be fully completed. A complete application contains the following forms and documents:

- 1. SF-424 (R&R), Application for Federal Assistance.** The SF-424 (R&R) must be signed by an authorized representative of the applicant organization.  
For SF-424 (R&R), items 5, 14, and 19, use the Zip Code +4 format (##### - ####) when addresses are called for.  
For SF-424 (R&R), item 16, the NIST SBIR Program is not covered by that Executive Order.  
For SF-424 (R&R), item 17, the list of certifications and assurances is contained in the Federal Financial Assistance Certifications and Representations (Certs and Reps) as part of the SAM.gov entity registration.  
For SF-424 (R&R), item 18, if the SF-LLL, Disclosure of Lobbying Activities form (item 6. below) is applicable, attach it to field 18.

Instructions for filling in the SF-424 (R&R) can be found on Grants.gov, as well as in the NIST Grants Management Division [SF-424 Research and Related \(R&R\) Application Package Guidance](#).

- 2. Research & Related Budget (Total Fed + Non-Fed).** The budget should reflect anticipated expenses for the full term of the project, considering all

potential cost increases, including cost of living adjustments.

The budget should be detailed in these categories:

- A. Senior/Key Person;
- B. Other Personnel;
- C. Equipment Description;
- D. Travel;
- E. Participant/Trainee Support Costs (not relevant to this competition);
- F. Other Direct Costs;
- G. Direct Costs (automatically generated);
- H. Indirect Costs;
- I. Total Direct and Indirect Costs (automatically generated);
- J. Fee;
- K. Total Costs and Fee (automatically generated);
- L. Budget Narrative and Justification document (item 8. below) should be attached to field L.

Instructions for completing the Research & Related Budget (Total Fed + Non-Fed) form can be found on Grants.gov, as well as in the NIST Grants Management Division [SF-424 Research and Related \(R&R\) Application Package Guidance](#).

**3. CD-511, Certification Regarding Lobbying.** Enter “2022-NIST-SBIR-02” in the Award Number Field. Enter the title of the application used in field 11 of the SF-424 (R&R), or an abbreviation of that title, in the Project Name field.

**4. Research and Related Other Project Information.** Answer the highlighted questions and use this form to attach the Cover Sheet, Technical Proposal, Commercialization Plan and Phase I Final Report (item (6) below); the Indirect Cost Rate Agreement (item (8) below); the SBA Company Registry Form (item (9) below); the Data Management Plan (item (10) below); the Research & Related Personal Data form(s) (item (12) below); the Current and Pending Support Form (item (13) below); the Compliance with SBIR Program Requirements, Applicant Fraud Awareness Training (item (14) below); and Letters of Commitment (item (15) below). Instructions for completing the Research and Related Other Project Information can be found on Grants.gov, as well as in the NIST Grants Management Division [SF-424 Research and Related \(R&R\) Application Package Guidance](#).

Please note that the Project Summary/Abstract is not relevant to this competition. However, Grants.gov requires an attachment to field 7 of the Research and Related Other Project Information form to successfully pass through Grants.gov. Please attach a document to field 7 stating, “A Project Summary/Abstract is not relevant to this competition”.

There are no separate documents required for field 9, “Bibliography & References Cited”; or for field 10, “Facilities & Other Resources;” or for field 11, “Equipment”. Any details relating to these topics should be included in other documents and forms, if and as specified in this NOFO.

**5. SF-LLL, Disclosure of Lobbying Activities (if applicable).**

**6. Cover Sheet (Appendix A) and Technical Proposal.** Read Section 3.02 of this NOFO very carefully, and in its entirety, for directions on completing this section of the application. The Technical Content is limited to 15 pages, see Section 3.02. The Commercialization Plan and Phase I Final Report portions of the Technical Proposal do not count against the page limit – see Sections 3.02.03 and 3.02.04.

**7. Budget Narrative and Justification.** There is no set format for the Budget Narrative and Justification; however, the written justification should include the necessity and the basis for the cost, as described below. Proposed funding levels must be consistent with the project scope, and only allowable costs should be included in the budget. Information on cost allowability is available in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at [2 C.F.R. Part 200](#), which apply to awards in this program. If requested, include TABA funds (see Section 5.12) in the Budget Narrative and Justification.

The Budget Narrative and Justification must be attached to the Research & Related Budget (Total Fed + Non-Fed) and it does not count against the 15-page limit of the Technical Proposal.

Information needed for each budget category is as follows (categories not listed are automatically generated by the form or are not relevant to this competition):

(a) **Senior/Key Person** – At a minimum, the budget justification should include the following: name, job title, commitment of effort on the proposed project in terms

of average number of hours per week or percentage of time, salary rate, total direct charges on the proposed project, description of the role of the individual on the proposed project, and the work to be performed.

Fringe benefits should be identified separately from salaries and wages and based on rates determined by organizational policy. The items included in the fringe benefit rate (e.g., insurance, parking, etc.) should not be charged under another cost category.

- (b) **Other Personnel** – Data is requested at the project role level, and not at the individual level for Other Personnel. The budget justification should include the following: job title, commitment of effort on the proposed project in terms of average number of hours per week or percentage of time, salary rate, total direct charges on the proposed project, description of the role of the position on the proposed project and the work to be performed.

Fringe benefits should be identified separately from salaries and wages and based on rates determined by organizational policy. The items included in the fringe benefit rate (e.g., health insurance, parking, etc.) should not be charged under another cost category.

- (c) **Equipment Description** – Equipment is defined as an item of property that has an acquisition cost of \$5,000 or more (unless the organization has established lower levels) and an expected service life of more than one year. The budget justification should list each piece of equipment, the cost, and a description of how it will be used and why it is necessary to the successful completion of the proposed project. Please note that any general use equipment (computers, etc.) charged directly to the award should be allocated to the award according to expected usage on the project (i.e. prorated cost). Applicants should provide at least two (2) quotes, if available, for equipment costing \$25,000 or more. If two (2) quotes are not available, please provide a statement as to why two (2) quotes are not available.

Any items that do not meet the threshold for equipment can be included under the Materials and Supplies line item in Section F, Other Direct Costs.

- (d) **Travel** — For all travel costs, required by the recipient to complete the project,

including attendance at any relevant conferences, the budget justification for travel should include the following: destination; names or number of people traveling; dates and/or duration; mode of transportation, lodging and subsistence rates; and description of how the travel is directly related to the proposed project. For travel that is yet to be determined, please provide best estimates based on prior experience. If a destination is not known, an approximate amount may be used with the assumptions given for the location of the meeting.

- (f) **Other Direct Costs** – For costs that do not easily fit into the other cost categories, please list the cost, and the breakdown of the total costs by quantity or unit of cost. Include the necessity of the cost for the completion of the proposed project. Only allowable costs can be charged to the award.

Each subaward or contractual cost should be treated as a separate item in the Other Direct Costs category. Describe the services to be provided and the necessity of the subaward or contract to the successful performance of the proposed project. Contracts are for obtaining goods and services. Subawardees perform part of the project scope of work. For each subaward, applicants must provide budget detail justifying the cost of the work performed on the project.

- (h) **Indirect Costs** – Commonly referred to as Facilities & Administrative Costs, Indirect Costs are defined as costs incurred by the applicant organization that cannot otherwise be directly assigned or attributed to a specific project. For more details, see Section 8.01(9) of this NOFO.

- (j) **Fee** – Profit or fee not to exceed 7% of the sum of the direct and indirect costs must be listed in this budget category if included in the proposed budget.

**8. Indirect Cost Rate Agreement.** If indirect costs are included in the proposed budget, provide a copy of the approved negotiated agreement if this rate was negotiated with a cognizant Federal audit agency. If a rate has not been established, provide a statement to this effect and a computation for the cost in the budget narrative. Applicants without an established rate may propose estimated indirect costs at a rate not to exceed 40 percent of the total direct costs and will not be required to provide further justification if selected for an award. Applicants without an established rate who propose a rate exceeding 40% may request negotiation of an indirect cost rate

agreement. Any profit or fee requested is not considered a direct cost for the purpose of the indirect cost base calculation.

9. **SBA Company Registry Form.** SBA maintains and manages a [Company Registry](#) to track ownership and affiliation requirements for all companies applying to the SBIR Program. The SBIR/STTR Policy Directive requires each Phase II applicant to register in the Company Registry prior to submitting an application. The applicant must save its information from the registration in a .pdf document. Attach this document to the Research and Related Other Project Information form as described in Section 8.02.
10. **Data Management Plan.** Consistent with NIST Policy 5700.00<sup>2</sup>, *Managing Public Access to Results of Federally Funded Research*, and NIST Order 5701.00<sup>3</sup>, *Managing Public Access to Results of Federally Funded Research*, applicants proposing projects that include the conduct of research must include a Data Management Plan (DMP).

All applications for activities that will generate scientific data using NIST funding are required to adhere to a DMP or explain why data sharing and/or preservation are not within the scope of the project. For the purposes of the DMP, NIST adopted the definition of “research data” at 2 C.F.R. § 200.315(e)(3).

The DMP must include, at a minimum, a summary of proposed activities that are expected to generate data; a summary of the types of data expected to be generated by the identified activities; a plan for storage and maintenance of the data expected to be generated by the identified activities, including after the end of the award’s period of performance; and a plan describing whether and how data generated by the identified activities will be reviewed and made available to the public.

A template for the DMP, an example DMP, and the rubric against which the DMP will be evaluated for sufficiency is available on NIST’s Public Access to NIST Research [Information for Awardees webpage](#). Please pay particular attention to the 20 Performance Criteria (PC) that appear in the rubric section and ensure all 20 PCs are addressed.

If an application stands a reasonable chance of being funded and the DMP is

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<sup>2</sup> [https://www.nist.gov/system/files/documents/2018/06/19/final\\_p\\_5700.pdf](https://www.nist.gov/system/files/documents/2018/06/19/final_p_5700.pdf)

<sup>3</sup> [https://www.nist.gov/system/files/documents/2019/11/08/final\\_o\\_5701\\_ver\\_2.pdf](https://www.nist.gov/system/files/documents/2019/11/08/final_o_5701_ver_2.pdf)

determined during the review process to be insufficient, the program office may reach out to the applicant to resolve deficiencies in the DMP. If an award is issued prior to the deficiencies being fully rectified, the award will include a Specific Award Condition (SAC) stating that no research activities shall be initiated or costs incurred for those activities under the award until the NIST Grants Officer amends the award to indicate the SAC has been satisfied.

Reasonable costs for data preservation and access may be included in the application.

**11. Subaward Budget Form.** The Research & Related Subaward Budget Attachment Form is required if sub-recipients and contractors are included in the application budget.

Instructions for completing and attaching subaward budget forms are available by visiting the [R & R Family section](#) of the Grants.gov Forms Repository and scrolling down to the R & R Subaward Budget Attachment(s) Form and selecting “Instructions.”

**12. Research & Related Personal Data.** Answer the highlighted questions.

Complete and print the form available in the [R&R Family Section](#) of the Grants.gov Forms Repository and scrolling down to the Research & Related Personal Data form. Attach this document to the Research and Related Other Project Information form as described in Section 8.02.

**13. Current and Pending Support Form.** Any application that includes investigators, researchers, and key personnel must identify all sources of current and potential funding, including this proposal. Any current project support (e.g., Federal, state, local, public or private foundations, etc.) must be listed on this form. The proposed project and all other projects or activities requiring a portion of time of the Principal Investigator (PI), co-PI, and key personnel must be included, even if no salary support is received. The total award amount for the entire award period covered, including indirect costs, must be shown as well as the number of person-months per year to be devoted to the project, regardless of the source of support. Similar information must be provided for all proposals already submitted or that are being submitted concurrently to other potential funders.

Applicants must complete the Current and Pending Support Form, using

multiple forms as necessary to account for all activity for each individual identified in the PI, co-PI and key personnel roles. A separate form should be used for each identified individual.

Applicants must download the Current and Pending Support Form from the NIST Grants Management Division [Current and Pending Support](#) and reference the guidance provided as it contains information to assist with accurately completing the form.

**14. Compliance with SBIR Program Requirements, Applicant Fraud Awareness Training - Certificate of Training Completion.** Complete the training at: <https://www.nist.gov/file/384881>. After completion, print and fill out the last page of the training presentation. Attach this document to the Research and Related Other Project Information form as described in Section 8.02.

**15. Letters of Commitment.** Letters must be submitted by all funded and unfunded entities, including TABA providers, that will have an active role in executing the activities outlined in the Project Narrative. Letters of Commitment must address the level of participation, qualifications of the personnel who will be actively involved, and how successful completion of this project would positively impact their profession or community. Letters of Commitment must also specify any voluntary committed cost-share, including the specific services and/or products to be used in the project. Letters of Commitment must be signed by an individual with authority to legally bind the organization to its commitment. Letters of commitment do not count against the specified page limits.

**16. Company Commercialization Report (CCR).** Attach a PDF copy of the CCR which was completed in your account at Sbir.gov and submit along with your proposal (refer to Section 3.01.01 SBA Data Collection Requirement).

## **8.02 Attachment of Required Application Documents**

Items 8.01.1 through 8.01.4 above are part of the standard application package in Grants.gov and can be completed through the download application process.

Item 8.01.5, the SF-LLL, Disclosure of Lobbying Activities form, is an optional application



form which is part of the standard application package in Grants.gov. If item 8.01.5, the SF-LLL, Disclosure of Lobbying Activities form is applicable to this proposal, attach it to field 18 of the SF-424 (R&R), Application for Federal Assistance.

Item 8.01.6, the Cover Sheet, Technical Proposal, Commercialization Plan and Phase I Final Report, should be attached to field 8 (Project Narrative) of the Research and Related Other Project Information form by clicking on “Add Attachment”.

Item 8.01.7, the Budget Narrative and Justification, should be attached to field L (Budget Justification) of the Research and Related Budget (Total Fed + Non-Fed) form by clicking on “Add Attachment”.

Items 8.01.8, the Indirect Cost Rate Agreement; 8.01.9, the SBA Company Registry Form; 8.01.10, the Data Management Plan; 8.01.12, the Research & Related Personal Data; 8.01.13, the Current and Pending Support Form; 8.01.14, the SBIR Applicant Fraud Awareness Training Certificate of Training Completion; and 8.01.15 Letters of Commitment, and 8.01.16 Company Commercialization Report (CCR), must be attached by clicking on “Add Attachments” found in item 12 (Other Attachments) of the Research and Related Other Project Information form.

Item 8.01.11, the Subaward Budget Form(s), if applicable to the submission, should be attached to the Research & Related Subaward Budget (Total Fed + Non-Fed) Attachment(s) Form in the application package.

Following these directions will create zip files which permit transmittal of the documents electronically via Grants.gov.

### **8.03 Verifying the Submission and Tracking the Application**

Applicants should carefully follow specific Grants.gov instructions at [www.Grants.gov](http://www.Grants.gov) to ensure the attachments will be accepted by the Grants.gov system. A receipt from Grants.gov indicates only that an application was transferred to a system. It does not provide details concerning whether all attachments (or how many attachments) transferred successfully. Attachment file names should be kept as short as possible due to potential file corruption after the addition of extensions by Grants.gov. Applicants will receive a series of e-mail messages over a period of up to two business days before learning whether a Federal agency’s electronic system has received its application.

Applicants are strongly advised to use Grants.gov’s “Download Submitted Forms and Applications” option to check that their application’s required attachments were contained in their submission.

After submitting the application, check the status of your application here: [CHECK APPLICATION STATUS](#). If any, or all, of the required attachments are absent from the submission, follow the attachment directions found above, resubmit the application, and check again for the presence of the required attachments.

If the directions found at [the Grants.gov Online Help page](#) are not effective, please contact the Grants.gov Help Desk immediately. If calling from within the United States or from a U.S. territory, please call 800-518-4726. If calling from a place outside the United States or a U.S. territory, please call 606-545-5035. E-mails should be addressed to [support@grants.gov](mailto:support@grants.gov). Assistance from the Grants.gov Help Desk will be available around the clock every day, with the exception of Federal holidays. Help Desk service will resume at 7:00 a.m. Eastern Time the day after Federal holidays.

*Applicants can track their submission in the Grants.gov system by following the procedures at [Grants.gov Track My Application page](#). It can take up to two business days for an application to fully move through the Grants.gov system to NIST. NIST uses the Tracking Numbers assigned by Grants.gov, and does not issue Agency Tracking Numbers.*

#### **8.04 Unique Entity Identifier and System for Award Management (SAM)**

Pursuant to 2 C.F.R. Part 25, applicants and recipients (as the case may be) are required to: (i) be registered in SAM before submitting its application; (ii) provide a valid unique entity identifier in its application; and (iii) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency, unless otherwise excepted from these requirements pursuant to 2 C.F.R. § 25.110. NIST will not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time that NIST is ready to make a Federal award pursuant to this NOFO, NIST may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

## 9.0 RESEARCH AREAS

The NIST research programs work at the frontiers of measurement science to ensure that the U.S. system of measurements is firmly grounded in sound scientific and technical principles. Today, the NIST laboratories address increasingly complex measurement challenges, ranging from the very small (nanoscale devices for advanced computing) to the very large (vehicles and buildings), and from the physical (resilient infrastructure) to the virtual (cybersecurity and data science). As new technologies develop and evolve, NIST's measurement research and services remain central to national defense, homeland security, trade and innovation.

NIST's research activities provide industry, academia and other federal agencies with world-class research capabilities in measurement science that form the foundation of the global system of weights and measures and enable innovation. NIST provides measurement tools and standards to strengthen U.S. competitiveness and security in the following areas:

### **Advanced Communications, Networks and Scientific Data Systems**

NIST's Advanced Communications, Networks and Scientific Data Systems activities enable secure, reliable, high-speed wireless and wireline communications critical to U.S. economic competitiveness, safety and security. NIST measurement science research and support for the development of standards accelerates the deployment of next-generation communication technologies needed for commercial-scale use of connected vehicles, "internet of things" (IoT) applications, drones and future artificial intelligence/machine learning-based systems. NIST is committed to helping solve the measurement and validation challenges of these fast-moving fields to help the U.S. achieve and maintain global leadership in these areas.

### **Advanced Manufacturing and Material Measurements**

NIST has partnered with the U.S. manufacturing sector for more than a century and has a proven track record of delivering useful tools and technical assistance to existing manufacturers and aspiring start-ups. NIST's Advanced Manufacturing and Material Measurements activities provide industry with precision measurement technologies, tests, protocols and world-class scientific and engineering knowledge through targeted research across a broad portfolio, including advanced materials development, advanced sensing, biomanufacturing and smart manufacturing systems. NIST's efforts in advanced

manufacturing and material measurements rely on three major mechanisms: partnerships with manufacturers, development of physical and information standards, and development of new measurement capabilities.

### **Cybersecurity and Privacy**

NIST's Cybersecurity and Privacy activities strengthen the security of the digital environment through a portfolio bridging foundational and applied cybersecurity research, and through the development of publicly available standards and technical guidance. NIST's sustained outreach efforts support the effective application of standards and best practices enabling the adoption of practical cybersecurity and privacy. Through internal research and collaboration with the private sector, academia, standards development organizations, other government agencies and national and international stakeholders, NIST addresses the nation's current and future measurement science needs and is responsive to Congressional mandates and Executive Orders.

### **Fundamental Measurement, Quantum Science and Measurement Dissemination**

At the heart of NIST's mission is the dissemination of the fundamental units of measurement (the International System of Units, or SI). NIST determines the definitive methods for nearly every kind of measurement employed in commerce and research, provides NIST-traceable calibrations, and disseminates standards and best practices throughout the nation. Staying ahead of the increasingly challenging demands of U.S. industry requires that NIST push the frontiers of measurement science by devising new tools and techniques—especially at the quantum scale where the rules of classical physics do not apply. Through balanced and coordinated programs, NIST leads the world in disseminating the fundamental units of measurement. This leadership in metrology advancement directly impacts NIST's relevance and leadership in measurement services.

### **Health and Biological Systems Measurements**

NIST provides a solid foundation of measurement assurance enabling reproducibility of biomedical research results and confidence in clinical decision-making and ensuring the efficacy and safety of treatments. As a nonregulatory agency, NIST's research plays an essential role in health and bioscience innovations, including in precision medicine, engineering biology, medical imaging, regenerative medicine and our understanding of the microbiome and how it affects health. New and improved measurement capabilities

advance our understanding of biology and provide the basis for industries to harness this information for future medical technologies.

### **Physical Infrastructure and Resilience**

NIST's Physical Infrastructure and Resilience activities support the safety, interoperability and resilience of the nation's infrastructure at the component, structure and system levels. NIST's research supports the development of building codes making the built environment healthier for occupants, more resilient against hazards, and safer for both residents and first responders. In collaboration with policymakers, building officials and planning groups, NIST produces guides to help communities integrate resilience into their economic development, zoning, mitigation and other local planning activities impacting buildings, public utilities and infrastructure systems.

### **Exploratory Measurement Science**

NIST's mission requires deep expertise in a broad range of disciplines. To best position NIST to support U.S. technological interests well into the future, it is essential that NIST maintain a portfolio of exploratory measurement science research programs. NIST invests in higher-risk and potentially transformative measurement science research to stay on the cutting edge of technology trends.

## Appendix A. COVER SHEET

(A fillable version of the Cover Sheet is available at <http://www.nist.gov/sbir>)

| <b>Application to National Institute of Standards and Technology<br/>(NIST) Small Business Innovation Research (SBIR) Program Phase II<br/>2023-NIST-SBIR-02 (April 6, 2023)</b>  |  |   |  |
|---|--|---|--|
| <b>Cover Sheet</b>  |  |   |  |
| <b>Name &amp; Address<br/>of Submitting<br/>Firm:</b>   |  |   |  |
| <b>Proj<br/>ect<br/>Title</b>   |  |   |  |
| <b>Principal<br/>Investigat<br/>or (PI)<br/>Name</b>  |  | <b>PI Title</b>   |  |
| <b>PI Phone<br/>#</b>   |  | <b>PI E-<br/>mail</b>   |  |
| <small>NIST may verify the following responses with information provided elsewhere in your application or by independent sources.</small>   |  |   |  |
| <b>THE APPLICANT CERTIFIES THAT:</b>  |  |   |  |
| 1. It is a small business concern (SBC) and meets the definition as stated in this Notice of Funding Opportunity (NOFO).  |  | <input type="checkbox"/> Yes <input type="checkbox"/> No  |  |
| 2. The primary employment of the PI will be with the SBC at the time of award and during the conduct of research.   |  | <input type="checkbox"/> Yes <input type="checkbox"/> No  |  |
| 3. A minimum of either two-thirds for Phase I or one-half for Phase II of the research will be performed by the SBC as determined by data provided in the Budget Narrative. See NOFO Section <b>1.03.01</b> for details on funding determination.   |  | <input type="checkbox"/> Yes <input type="checkbox"/> No  |  |
| 4. The applicant and/or PI <input type="checkbox"/> has / <input type="checkbox"/> has not received other Federal awards for essentially equivalent work. If "has", what agency? <a href="#">Click here to enter text.</a> See NOFO Section 3.02.02(12) for additional details that must be provided. |  | <input type="checkbox"/> has not submitted applications for essentially equivalent work under other Federal program |  |
| 5. The applicant qualifies as a socially and economically disadvantaged SBC and meets the definition as stated in this NOFO.  |  | <input type="checkbox"/> Yes <input type="checkbox"/> No  |  |
| 6. The applicant qualifies as a woman-owned SBC and meets the definition as stated in this NOFO.  |  | <input type="checkbox"/> Yes <input type="checkbox"/> No  |  |
| 7. The applicant qualifies as a HUBZone-owned SBC and meets the SBA's definition (see <a href="http://www.sba.gov/hubzone">http://www.sba.gov/hubzone</a> ).  |  | <input type="checkbox"/> Yes <input type="checkbox"/> No  |  |
| 8. Year SBC founded:  |  | <a href="#">Click here to enter text.</a>   |  |
| 9. Number of Employees:   |  | <a href="#">Click here to enter text.</a>   |  |
| <b>STATEMENTS:</b>  |  |   |  |

|   |  |
|---|--|
| 10. The applicant will permit the Federal Government to disclose name, address, and telephone number of the corporate official of your concern, if your application does not result in an award, to appropriate local and State-level economic development organizations that may be interested in contacting you for further information.  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 11. The applicant authorizes contact information and project title to be provided to the NIST Manufacturing Extension Partnership (MEP) after awards have been announced. If 'Yes' your contact information will be provided to NIST MEP. If so, you will be contacted by your local MEP to explore business-related support services that could benefit the potential of the project you proposed. | <input type="checkbox"/> Yes <input type="checkbox"/> No |

|  |  |
|--|--|
| Signature of Company Official<br>and typed name, title,<br>address, telephone number,<br>and date  |  |
| Signature of Principal Investigator<br>and typed name, title, address, telephone<br>number, and date   |  |
| <b>TECHNICAL ABSTRACT (limit to 200 words):</b>  |  |
|  |  |
| <b>POTENTIAL COMMERCIAL APPLICATION OF THE RESEARCH: (limit to 100 words)</b>  |  |
|  |  |
| <b>OTHER INFORMATION:</b>  |  |
| <p>Information contained in unsuccessful applications will remain the property of the applicant. The Federal Government may, however, retain copies of all applications. Public release of information in any application submitted will be subject to existing statutory and regulatory requirements. Applicants are discouraged from submitting proprietary information unless the information is deemed essential for proper evaluation of the application. If proprietary information provided by an applicant in a proposal constitutes trade secret, proprietary commercial or financial information, confidential personal information, or data affecting national security, it will be treated in confidence to the extent permitted by law, provided that the proposal is clearly marked by the applicant as follows:</p> <p>(A) The following legend must appear on the title page of the proposal:</p> <p style="padding-left: 40px;">This proposal contains information that shall not be disclosed outside the Federal Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of this proposal, unless authorized by law. The Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting award if award is made as a result of the submission of this proposal. The information subject to these restrictions are contained on all pages of the proposal except for pages [insert page number or other identification of pages that contain no restricted information.]</p> <p style="text-align: center;">(End of Legend); and</p> <p>(B) The following legend must appear on each page of the proposal that contains information the applicant wishes to protect: Use or disclosure of information contained on this sheet is subject to the restriction on the title page of this proposal.</p> |  |

The use of any other legend is unacceptable to the Government and may constitute grounds for removing the application from further consideration without assuming any liability for inadvertent disclosure.

This collection of information contains Paperwork Reduction Act (PRA) requirements approved by the Office of Management and Budget (OMB). Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. Public reporting burden for this collection is estimated to be 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the National Institute of Standards and Technology, Attn: Jacqueline Gray, 100 Bureau Dr., MS 2200, Gaithersburg, MD 20899.

**OMB Control No. 0693-0072**

**Expiration Date: 1/31/2024**



## Appendix B. DUE DILIGENCE CERTIFICATION

Firm Name: \_\_\_\_\_ Firm EIN (UEI if EIN is unavailable): \_\_\_\_\_

As indicated below this document may contain trade secrets or commercial or financial information that is privileged or confidential and is exempt from public disclosure. Consistent with Federal law, the Government shall use or disclose such information only for evaluation purposes or in accordance with a financial assistance agreement between the submitter and the Government. The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source.

### Disclosure Questions

1. Is any owner of the small business concern or covered individual party to any foreign talent recruitment program of any foreign country of concern?

Yes  No If yes, please disclose the name of each owner, officer, or covered individual and the foreign talent recruitment program.

| First Name | Last Name | E-mail Address | Role (Owner or Covered Individual) | Current Country of Residence | Foreign Talent Recruitment Program |
|------------|-----------|----------------|------------------------------------|------------------------------|------------------------------------|
|            |           |                |                                    |                              |                                    |
|            |           |                |                                    |                              |                                    |
|            |           |                |                                    |                              |                                    |

2. Is there a joint venture or subsidiary, of your small business concern that is based in, funded by, or has a foreign affiliation with any foreign country of concern?  Yes  No If yes, please disclose the name and address of each joint venture or subsidiary.

| Entity Name | Street Address | City | State | Zip | Country | Relationship (i.e., Joint Venture, Subsidiary) |
|-------------|----------------|------|-------|-----|---------|--|
|             |                |      |       |     |         |  |
|             |                |      |       |     |         |  |
|             |                |      |       |     |         |  |

3. Is your small business concern wholly owned in a foreign country of concern?  Yes  No If yes, please disclose the foreign country of concern.

| Foreign Country of Concern |
|----------------------------|
|                            |

4. Does your small business concern have any venture capital or institutional investment?  Yes  No If yes, please proceed to the next question. If no, please proceed to question 5.

4a. Does the investing entity have a general partner or individual holding a leadership role who has a foreign affiliation with any foreign country of concern, including the People’s Republic of China?  Yes  No If yes, please populate the table below. If no, please proceed to question 5.

| Venture Capital or Institutional Investor  | Percentage of Investment | Type of Investment (e.g., Equity, Debt, or Equity and Debt) |
|--|--------------------------|---|
| <input type="checkbox"/> Check box if this table contains trade secrets or commercial or financial information this is privileged or confidential and exempt from public disclosure. |                          |   |
|  |                          |   |
|  |                          |   |
|  |                          |   |

5. During the previous 5-year period, did your small business concern have any technology licensing or intellectual property sales to a foreign country of concern?  Yes  No If yes, please disclose the name and address of the institution that licensed or purchased the intellectual property.

| Licensee or Intellectual Property Buyer Name   | Foreign Country of Concern | Street Address | City | State | Zip | Country |
|--|----------------------------|----------------|------|-------|-----|---------|
| <input type="checkbox"/> Check box if this table contains trade secrets or commercial or financial information this is privileged or confidential and exempt from public disclosure. |                            |                |      |       |     |         |
|  |                            |                |      |       |     |         |
|  |                            |                |      |       |     |         |
|  |                            |                |      |       |     |         |

**Questions 6 and 7 relate to ANY foreign countries.**

6. Does your small business concern have any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a foreign state or any foreign entity?  Yes  No If yes, please disclose the name and address of the enterprise and the nature of the business relationship.

| Enterprise or Foreign Entity Name  | Relationship Type (i.e., current or pending contractual arrangement, financial obligation, other agreement/business arrangement, joint venture-like arrangement) | Description of Relationship | Enterprise Owned by a Foreign State (Y/N) | Foreign State/Entity Country Name |
|--|--|-----------------------------|---|-----------------------------------|
| <input type="checkbox"/> Check box if this table contains trade secrets or commercial or financial information this is privileged or confidential and exempt from public disclosure. |  |                             |   |                                   |
|  |  |                             |   |                                   |
|  |  |                             |   |                                   |
|  |  |                             |   |                                   |

7. Is there any foreign business entity, offshore entity, or entity outside the United States related to your small business concern?  Yes  No If yes, please disclose the name and address of the entity and the relationship to your small business concern.

| Entity Name  | Entity Type (i.e., foreign business entity, offshore entity, entity outside the United States) | Description of Relationship | Foreign State/Entity Country Name | Street Address | City | State | Zip | Country |
|--|--|-----------------------------|-----------------------------------|----------------|------|-------|-----|---------|
| <input type="checkbox"/> Check box if this table contains trade secrets or commercial or financial information this is privileged or confidential and exempt from public disclosure. |  |                             |                                   |                |      |       |     |         |
|  |  |                             |                                   |                |      |       |     |         |
|  |  |                             |                                   |                |      |       |     |         |
|  |  |                             |                                   |                |      |       |     |         |

**Certification**

I certify to the best of my knowledge and belief that the information contained in this Disclosure of Foreign Relationships is true, complete, and accurate. I understand that any false, fictitious, or fraudulent information, misrepresentations, half-truths, or omissions of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (18 U.S.C. §§ 1001 and 287, and 31 U.S.C. §§ 3729-3733 and 3801-3812).

I understand that the small business concern will be required to repay all amounts received under the award if there is a material misstatement that NIST determines poses a risk to national security, or there is a change in ownership, change to entity structure, or other substantial change in the circumstances of the small business concern that NIST determines poses a risk to national security. (15 U.S.C. § 638(g)).

I further understand and agree that (1) the statements and representations made herein are material to NIST’s funding decision, and (2) I have a responsibility to update the disclosures during the period of performance of the award if: (i) there is any change to a disclosure required under questions 1-7, (ii) there is any material misstatement that NIST could determine poses a risk to national security, or (iii) there is a change in ownership, change to entity structure, or other substantial change in the circumstances of the small business concern that NIST could determine poses a risk to national security. (15 U.S.C. § 638(g)).

|   |                      |
|---|----------------------|
| <i>Signature</i>                        | <i>Date</i> __/__/__ |
| <i>Print Name (First, Middle, Last)</i> |                      |
| <i>Role/Title</i>                       |                      |
| <i>Name of Small Business Concern</i>   |                      |

The Disclosure of Foreign Relationships is a part the National Institute of Standards and Technology (NIST) due diligence program under 15 U.S.C. §§ 638(g)(13), (g)(15) and (vv) and is exempt from the Paperwork Reduction Act.

## Relevant Definitions for Due Diligence Certification

### Relevant Definitions per the Act (15 U.S.C 638 (e))

**(15) Covered individual** - the term "covered individual" means an individual who-

(A) contributes in a substantive, 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; and

(B) is designated as a covered individual by the Federal research agency concerned;

**(16) Foreign affiliation** - the term "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);

**(17) Foreign Country of Concern** - the term "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;

**(18) Malign Foreign Talent Recruitment Program** - the term "malign foreign talent recruitment program" has the meaning given such term in section 19237 of title 42; (see appendix)

**(19) Federally funded award** - the term "federally funded award" means a Phase I, Phase II (including a Phase II award under subsection (cc)), or Phase III SBIR or STTR award made using a funding agreement.

### Malign Foreign Talent Recruitment Program Definition

(4) Malign foreign talent recruitment program (42 USC 19237, as October 20, 2022)

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)<sup>4</sup>; 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).

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<sup>4</sup> [10 USC Subtitle A, PART V, Subpart E: Research and Engineering \(house.gov\)](#)

## Appendix C. CERTIFICATIONS

### **SBIR Funding Agreement Certification (at time of award)**

All small businesses that are selected for award of an SBIR funding agreement must complete this certification at the time of award and any other time set forth in the funding agreement that is prior to performance of work under this award. This includes checking all of the boxes and having an authorized officer of the awardee sign and date the certification each time it is requested.

Please read carefully the following certification statements. The Federal government relies on the information to determine whether the business is eligible for a Small Business Innovation Research (SBIR) Program award. A similar certification will be used to ensure continued compliance with specific program requirements during the life of the funding agreement. The definitions for the terms used in this certification are set forth in the Small Business Act, SBA regulations (13 C.F.R. Part 121), the SBIR/STTR Policy Directive and also any statutory and regulatory provisions referenced in those authorities.

If the funding agreement officer believes that the business may not meet certain eligibility requirements at the time of award, they are required to file a size protest with the U.S. Small Business Administration (SBA), who will determine eligibility. At that time, SBA will request further clarification and supporting documentation in order to assist in the verification of any of the information provided as part of a protest. If the funding agreement officer believes, after award, that the business is not meeting certain funding agreement requirements, the agency may request further clarification and supporting documentation in order to assist in the verification of any of the information provided.

Even if correct information has been included in other materials submitted to the Federal government, any action taken with respect to this certification does not affect the Government's right to pursue criminal, civil or administrative remedies for incorrect or incomplete information given in the certification. Each person signing this certification may be prosecuted if they have provided false information.

The undersigned has reviewed, verified and certifies that (all questions must be responded to by checking the appropriate box):

(1) The Awardee business concern meets the ownership and control requirements set forth in 13 C.F.R. § 121.702.

Yes  No

If a corporation, all corporate documents (namely: articles of incorporation and any amendments, articles of conversion, by-laws and amendments, shareholder meeting minutes showing officer elections, organizational meeting minutes, all issued stock certificates, stock ledger, buy-sell agreements, stock transfer agreements, voting agreements, and documents relating to stock options, including the right to convert non-voting stock or debentures into voting stock) must include evidence that the corporation meets the ownership and control requirements set forth in 13 C.F.R. § 121.702.

Yes       No       N/A Explain why N/A:

---

(2) If a partnership, the partnership agreement evidences that it meets the ownership and control requirements set forth in 13 C.F.R. § 121.702.

Yes       No       N/A Explain why N/A:

---

If a limited liability company, the articles of organization and any amendments, and operating agreement and amendments, evidence that it meets the ownership and control requirements set forth in 13 C.F.R. § 121.702.

Yes       No       N/A Explain why N/A:

---

(3) The birth certificates, naturalization papers, or passports show that any individuals it relies upon to meet the eligibility requirements are U.S. citizens or permanent resident aliens in the United States.

Yes       No       N/A Explain why N/A:

---

(4) The Awardee business concern has no more than 500 employees, including the employees of its affiliates.

Yes       No

---

(5) SBA has not issued a size determination currently in effect finding that this business concern exceeds the 500-employee size standard.

Yes       No

---

(6) During the performance of the award, the principal investigator will spend more than



one half of his/her time (based on a 40-hour workweek) as an employee of the awardee or has requested and received a written deviation from this requirement from the funding agreement officer.

Yes     No     Deviation approved in writing by funding agreement officer: \_\_\_\_\_%

---

(7) All, essentially equivalent work, or a portion of the work proposed under this project (check the applicable line):

- Has not** been submitted for funding to this agency or another Federal agency.
  - Has** been submitted for funding to this agency or another Federal agency **but has not** been funded under any other grant, contract, subcontract or other transaction.
  - A portion has been funded by another grant, contract, or subcontract as described in detail in the application and approved in writing by the funding agreement officer.
- 

(8) During the performance of award, the Awardee will perform the applicable percentage of work unless a deviation from this requirement is approved in writing by the funding agreement officer (check the applicable line and fill in if needed):

- SBIR Phase I: at least two-thirds (66 2/3%) of the research.
  - SBIR Phase II: at least half (50%) of the research.
  - Deviation approved in writing by the funding agreement officer: \_\_\_\_\_%
- 

(9) During performance of award, the research/research and development will be performed in the United States unless a deviation is approved in writing by the funding agreement officer.

Yes     No     Waiver has been granted

---

(10) During performance of award, the research/research and development will be performed at the Awardee's facilities with the Awardee's employees, except as otherwise indicated in the SBIR application and approved in the funding agreement.

Yes     No

---

(11) The SBIR Awardee has registered itself on SBA's database as majority-owned by venture capital operating companies, hedge funds or private equity firms.

Yes     No     N/A Explain why N/A:

---

(12) The SBIR Awardee is a Covered Small Business Concern (a small business concern that:(a) 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 an SBIR solicitation; and (b) on the date of the SBIR award, which is made more than 9 months after the closing date of the solicitation, is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms).

Yes       No

(13) The SBIR Awardee will notify this agency immediately if all or a portion of the work authorized and funded under this award is subsequently funded by another Federal agency.

Yes       No

(14) I understand that the information submitted may be given to Federal, State and local agencies for determining violations of law and other purposes.

Yes       No

(15) I am an officer of the business concern authorized to represent it and sign this certification on its behalf. By signing this certification, I am representing on my own behalf, and on behalf of the business concern that the information provided in this certification, the application, and all other information submitted in connection with this application, is true and correct as of the date of submission. I acknowledge that any intentional or negligent misrepresentation of the information contained in this certification may result in criminal, civil or administrative sanctions, including but not limited to: (1) fines, restitution and/or imprisonment under 18 U.S.C. § 1001; (2) treble damages and civil penalties under the False Claims Act (31 U.S.C. § 3729 *et seq.*); (3) double damages and civil penalties under the Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*); (4) civil recovery of award funds, (5) suspension and/or debarment from all Federal procurement and nonprocurement transactions (FAR Subpart 9.4 or 2 C.F.R. Part 180); and (6) other administrative penalties including termination of SBIR/STTR awards.

**Signature** \_\_\_\_\_ **Date** \_\_\_\_/\_\_\_\_/\_\_\_\_

**Print Name (First, Middle, Last)**

---

**Title**

**Business Name**

## SBIR Funding Agreement Certification (Life-Cycle Certification)

All SBIR Phase I and Phase II awardees must complete this certification at all times set forth in the funding agreement (see §8(j) of the SBIR/STTR Policy Directive). This includes checking all of the boxes (unless otherwise directed) and having an authorized officer of the awardee sign and date the certification each time it is requested.

Please read carefully the following certification statements. The Federal government relies on the information to ensure compliance with specific program requirements during the life of the funding agreement. The definitions for the terms used in this certification are set forth in the Small Business Act, the SBIR/STTR Policy Directive, and also any statutory and regulatory provisions referenced in those authorities.

If the funding agreement officer believes that the business is not meeting certain funding agreement requirements, the agency may request further clarification and supporting documentation in order to assist in the verification of any of the information provided.

Even if correct information has been included in other materials submitted to the Federal government, any action taken with respect to this certification does not affect the Government's right to pursue criminal, civil, or administrative remedies for incorrect or incomplete information given in the certification. Each person signing this certification may be prosecuted if they have provided false information.

The undersigned has reviewed, verified and certifies that (all questions must be responded to by checking the appropriate box):

(1) The principal investigator spent more than one half of his/her time (based on a 40 hour workweek) as an employee of the awardee or the awardee has requested and received a written deviation from this requirement from the funding officer.

Yes       No       Deviation approved in writing by funding agreement officer: \_\_\_\_\_%

(2) All, essentially equivalent work, or a portion of the work performed under this project (check applicable line):

**Has not** been submitted for funding to this agency or another Federal agency.

**Has** been submitted for funding to this agency or another Federal agency but **has not** been funded under any other grant, contract, subcontract or other transaction.

(3) A portion has been funded by another grant, contract, or subcontract as described in detail in the proposal and approved in writing by the funding agreement officer. Upon completion of the award the awardee will have performed the applicable percentage or

work, unless a deviation from this requirement is approved in writing by the funding agreement officer (check the applicable line and fill in if needed):

- SBIR Phase I: at least two-thirds (66 2/3%) of the research.
- SBIR Phase II: at least half (50%) of the research.
- Deviation approved in writing by the funding agreement officer: \_\_\_\_\_%

(4) The work is completed and the small business awardee has performed the applicable percentage of work, unless a deviation from this requirement is approved in writing by the funding agreement officer (check the applicable line and fill in if needed):

- SBIR Phase I: at least two-thirds (66 2/3%) of the research.
- SBIR Phase II: at least half (50%) of the research.
- Deviation approved in writing by the funding agreement officer: \_\_\_\_\_%
- N/A because work is not completed.

(5) The research/research and development is performed in the United States unless a deviation is approved in writing by the funding agreement officer.

- Yes
- No
- Waiver has been granted

(6) The research/research and development is performed at the awardee's facilities by the awardee's employees, except as otherwise indicated in the SBIR application and approved in the funding agreement.

- Yes
- No

(7) I will notify the Federal agency immediately if all or a portion of the work authorized and funded under this award is subsequently funded by another Federal agency.

- Yes
- No

(8) I understand that the information submitted may be given to Federal, State and local agencies for determining violations of law and other purposes.

- Yes
- No

I am an officer of the awardee business concern authorized to represent it and sign this certification on its behalf. By signing this certification, I am representing on my own behalf, and on behalf of the business concern, that the information provided in this certification, the application, and all other information submitted in connection with the award, is true and correct as the date of submission. I acknowledge that any intentional or negligent misrepresentation of the information contained in this certification may result in criminal, civil or administrative sanctions, including but not limited to: (1) fines, restitution and/or imprisonment under 18 U.S.C. § 1001; (2) treble damages and civil penalties under the False

Claims Act (31 U.S.C. § 3729 *et seq.*); (3) double damages and civil penalties under the Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*); (4) civil recovery of award funds, (5) suspension and/or debarment from all Federal procurement and nonprocurement transactions (FAR Subpart 9.4 or 2 C.F.R. Part 180); and (6) other administrative penalties including termination of SBIR/STTR awards.

Yes     No

***Signature***

***Date*** \_\_\_/\_\_\_/\_\_\_

***Print Name (First, Middle, Last)***

---

***Title***

***Business Name***