

Increasing access to Innovation to by achieving SBIR Phase III Transition Goals

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DUSD(AT) memo to SMC: “We need to be able to access innovation where we seed it and where it resides which is often with small firms in our industrial base.”

Accessing Innovation through SBIR

- AFSPC invests ~\$25M/year in SBIR Phase I & II
 - Provides early investment for development of innovative new technologies by Small Businesses
- AF not achieving good return on investment from SBIR
 - SBIR Phase III transitions into AFSPC programs are rare
- SBIR Reauthorized in NDAA 2012
 - Section 9(r) of 15 U.S.C 638(r). To the greatest extent practicable, Federal agencies and Federal prime contractors shall issue Phase III awards relating to technology, including sole source awards, to the SBIR and STTR award recipients that developed the technology.

NDAAs 2012 SBIR language

Commercialization Readiness Program

- For any contract over \$100M
 - Goals must be established in subcontracting plans for transition of Phase III technologies
- Program Goals for SBIR and STTR technology insertion
 - SecDef sets goal to increase Phase II tech transition into programs of record or fielded systems
 - Use incentives to encourage agency program managers and prime contractors to meet the goal
 - Report on transitions and effectiveness of incentives

Recommendations for accessing innovation through SBIR

- Include SBIR tech development in acquisition plans
 - Identify specific technology areas where tech innovation needed
- Establish multiple award contracts with seed funding set-aside for Phase III maturation of promising technologies
 - e.g. BAA: GPS Enterprise Modernization Research and Prototype Demonstration
 - Plan for maturation from TRL 6 (Ph II) to TRL 8 for POR insertion
- Establish goals for prime contractors to achieve SBIR Phase III transitions
 - Include as evaluation factor for Prime's SB subcontracting plans
- Address Small Business concerns with "Bait and Switch"
 - SBJA allows for CO enforcement of prime subcontracting plans

Small Business subcontracting protection through SBJA 2010

- SBJA of 2010
 - The law holds large prime contractors more accountable to their own subcontracting plans by requiring written justification when plans aren't met and when small business subcontractors aren't paid on time. This helps eliminate “bait-and-switch” tactics that occur when large primes – after winning the prime contract – don't follow through with their own plans to give subcontracts to small businesses.
- “Bait and Switch” practice is particularly damaging for SBIR companies hoping for Phase III Subcontract
 - Often IP is disclosed during B&P phase
 - SB generally do not have resources to pursue legal remedies with Primes for IP infringement

Small Business Jobs Act of 2010

- **SEC. 1322. SMALL BUSINESS SUBCONTRACTING IMPROVEMENTS**

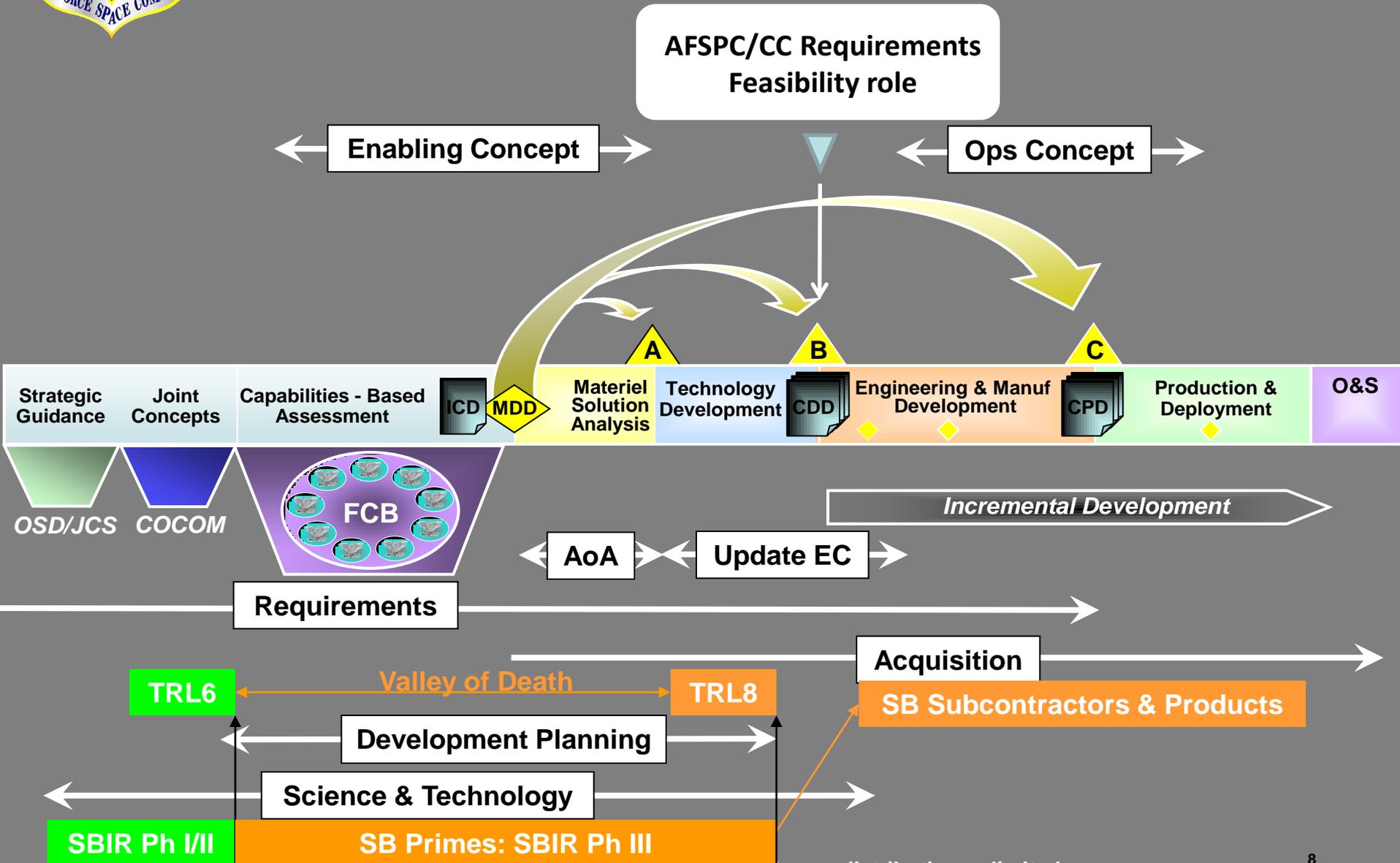
“(G) a representation that the offeror or bidder will—“(i) make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns used in preparing and submitting to the contracting agency the bid or proposal, in the same amount and quality used in preparing and submitting the bid or proposal;” and “(ii) provide to the contracting officer a written explanation if the offeror or bidder fails to acquire articles, equipment, supplies, services, or materials or obtain the performance of construction work as described in clause (i).”.”

Recommendations for making SBIR Phase III Subcontracting attractive

- Require Small Business Subcontracting plans to include named Small Businesses with details on work share
- Require CO approval for changing Small Business Subcontracting Plans and tie SB Subcontracting to award fees and performance evaluation
- Increase award evaluation criteria to incentivize using Small Businesses as subcontractors and rate past performance in executing SB Subcontracting Plans



Requirements & Acquisition



Backup

Small Business Jobs Act

- **SEC. 1331. RESERVATION OF PRIME CONTRACT AWARDS FOR SMALL BUSINESSES**
 - The law gives contracting officers the ability to reserve orders for small business participation on contracts with multiple awards including the Federal Supply Schedule (GSA Multiple Award Schedule).

SBIR Reauthorization Changes

- 2.5% increases to 3% in 2016 and 3.2% after that
- Phase I awards increased to \$150K and Phase II to \$1M with maximum increase of 50%
- Multiple Phase II awards are permitted from different agencies
- Sequential Phase II awards - 1 additional Phase II award can be made for continued work on the project
- Phase II awards can be made without Phase I award if subsection (e)(4)(A) criteria are met
 - “(e) (4) (A) a first phase for determining, insofar as possible, the scientific and technical merit and feasibility of ideas that appear to have commercial potential.

Definition of Terms

- Phase III: “for work that derives from, extends, or completes efforts made under prior funding agreements under the SBIR program”
- Commercialization: “(A) the process of developing products, processes, technologies, or services; and (B) the production and delivery (whether by the originating party or by others) of products, processes, technologies, or services for sale to or use by the Federal Government or commercial markets;”

Intellectual Property Protection

- Comptroller General shall conduct a study to assess if:
 - Federal agencies comply with SBIR data rights protection
 - There is an effective grievance tracking process for SBIR awardees and a procedure for resolving those grievances

NDAA 2012 Language

Subcontracting can limit access to Innovation – Sec John Young (May 2008)

- *"We should all work together to streamline the placement of contracts. However, we cannot let the challenge of placing contracts lead to bad decisions and behaviours. In one specific case, a small firm proposed a concept for a component upgrade to a DoD system. The program office urged the small company to go to the prime contractor with their product. In certain cases, where there are integration risks, this may be appropriate. In this case, there was virtually no integration risk. The reality was that the Defense Department would be charged significantly greater costs for buying the component through a prime. The small firm was urged to go to the prime solely for the convenience of using the existing prime contract. **Further, this flawed approach potentially limits DoD's access to innovation because many firms will feel their intellectual property is put at risk through the prime contract process.**"*

GAO-11-21 Space Acquisitions

- Challenges in Commercializing Technologies Developed under the Small Business Innovation Research Program
 - “The DoD’s current space systems play an increasingly important role in military operations; however, military space acquisition programs over the past two decades have experienced problems that have significantly increased costs and delayed schedules. Moreover, the supplier base for space programs has consolidated to a point where there are just a few prime contractors that compete for new efforts. SBIR offers one avenue for introducing new ideas and technological innovation in the DoD space sector.”
 - “Working in the space community is challenging because the technologies often require more expensive materials and testing than other technologies. **Additionally, several small businesses cited concerns with safeguarding their intellectual property.**”

SB Subcontracting Challenges

- GAO Report: Two of the three prime contractors interviewed indicated that they would prefer to buy a small business with a promising technology, rather than partner with the business in question, to maintain exclusive rights to the technologies developed.
- “Bait and Switch” is unfortunately common practice for subcontractors where work-share originally proposed for a SB is instead brought in-house by the Prime.
- If a SB pursues legal action for IP infringement, Primes can escalate court costs to a level that SB can’t support obviating practical defense of IP for small businesses.