

SMALL BUSINESS ELIGIBILITY REQUIREMENTS FOR APPLICANTS TO THE SMALL BUSINESS INNOVATION RESEARCH (SBIR) AND SMALL BUSINESS TECHNOLOGY TRANSFER (STTR) PROGRAMS

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National Institutes of Health (NIH)

The purpose of this notice is to restate the eligibility requirements for a small business concern to participate in the NIH SBIR and STTR programs, and to express that NIH has not adopted any new policies concerning eligibility.

NIH is following the program regulations outlined in the Small Business Administration (SBA) SBIR Policy Directive and clarified by the SBA. Federal agencies participating in the SBIR Program are obligated to follow the guidance provided by this Policy Directive.

As stated in the Policy Directive and in the PHS 2003-2 Omnibus Solicitation for NIH, CDC and FDA SBIR/STTR Grant Applications (<http://grants.nih.gov/grants/funding/sbirsttr1/index.doc>), a small business concern is one that on the date of award for both Phase I and Phase II agreements, meets all of the following criteria:

1. Is organized for profit, with a place of business located in the United States, which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials or labor;
2. Is in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture, there can be no more than 49 percent participation by foreign business entities in the joint venture;
3. Is at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States, except in the case of a joint venture, where each entity to the venture must be 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States; and

4. Has, including its affiliates, not more than 500 employees. The term "affiliates" is defined in greater detail in 13 CFR 121.3-2(a) and the term "number of employees" is defined in 13 CFR 121.3-2(t).

In October 2002, SBA, in accordance with their Office of General Counsel, issued a notice clarifying the definition and eligibility requirements of a small business concern. In particular, it highlighted the requirement that owners of the SBIR participant be "individuals" who are citizens of, or permanent resident aliens in, the United States.

Under the SBIR Program, the statute requires that the applicant must be eligible at the time of the award. NIH Grants management staff are responsible for ensuring that, for grants under their cognizance, both Federal staff and grantees fulfill applicable statutory, regulatory, and administrative policy requirements, both before and following award. As the responsible Federal Official for administering funds, Grants Management Officials must verify eligibility prior to issuing a notice of grant award.

In large part, NIH, like other federal agencies, relies on the disclosures of the grantee, and few applications include information that describes ownership. Even where the information is provided, it must be verified as current prior to award. The business official is required to certify that they meet these requirements. As stewards of Federal funds, NIH strives to stay in compliance with the eligibility criteria set forth by the SBA. In cases where the company has revealed that it is not owned by "individuals" but is owned by a corporation, or in other circumstances in which eligibility is unclear, NIH has made requests to the appropriate SBA Government Contracting Area Director to determine eligibility. NIH Grants Management Officials have done this for several years, even prior to the latest SBA Policy Directive clarification.

The SBA recently submitted a proposed Rule Change to the Office of Management and Budget that proposes to modify the small business eligibility requirements. (The Federal Register Notice is available at <http://www.sba.gov/size/sbir-pr.pdf>).

Questions regarding eligibility requirements for the SBIR program, can be directed to the SBA Government Contracting Area Director that has cognizance over the state in which your firm is located. Please click on the following web link to find the appropriate SBA office: <http://www.sba.gov/size/indexcontacts.html>

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