



Small Business Innovation Research (“SBIR”) Programs

Re: Frequently Asked Questions Regarding Faculty Participation in SBIR Programs

A number of Federal agencies, including the National Aeronautics and Space Administration, the National Science Foundation, and the Department of Defense, receive congressionally mandated set-aside funding to support research and development activities under the Small Business Innovation Research (SBIR) program (www.sbir.gov). Although these funds can only be awarded to small business entities as defined by the regulations, faculty are often interested in participating in these projects. This may be done under certain circumstances, most typically either by working at UAHuntsville on a subcontract from a small business that has received a SBIR award or, more rarely, as a consultant to the small business applicant. The preferred vehicle is through a formal subcontract. In the case of a consulting arrangement, University resources may not be used and it is critical that any consultancy not compete with the University in a subject matter area that could be performed by the faculty member as a funded activity through the University.

Participating in a SBIR program can create potential for conflict of interest, conflict of commitment and Alabama Ethics Act issues for a UAHuntsville faculty member. The following answers to frequently asked questions are developed to assist UAHuntsville faculty interested in participating with small businesses in SBIR projects. These answers are not intended to supersede federal or state regulations, or UAHuntsville policies; but, rather to give faculty an overview of the program and its requirements.

Introduction:

Eligibility:

SBIR Award Recipient must qualify as a Small Business Concern (SBC) which is defined as: (i) legally established and organized for profit with the place of business located in the U.S.; (ii) operated primarily in the U.S. or makes a significant contribution to the U.S. economy; (iii) majority owned and controlled by U.S. citizens or permanent resident aliens; and (iv) 500 employees or less, including any affiliates.

The primary employment of the Principal Investigator (PI) shall be with the SBC. Primary employment means that more than 50% of the PI's total employed time (including all concurrent employers, consulting, and self-employed time) is spent with the SBC at time of award and during the entire period of performance. Primary employment with a small business concern

precludes full-time employment at another organization. If the PI does not currently meet these primary employment requirements, then the SBC must explain how these requirements will be met if the proposal is selected for contract negotiations that may lead to an award. Co-PI's are not allowed.

NSF, for example, provides that an individual employed full-time by an academic or non-profit institution may become eligible to serve as a PI if the individual provides a statement signed (and placed in the proposal) by his/her Department Head and an Authorized Organizational Representative of the institution approving a minimum of 51 percent release from full-time employment at the institution for the performance periods, should the award be made. Other agencies have varying procedures, but all require that the PI be employed by the SBC more than 50% of the PI's total employed time. In all cases, permission must be sought in advance from the appropriate Vice President through the Dean/Center Director, and permission will not be granted unless the individual is on a leave of absence.

An SBC may replace the PI on an SBIR Phase I or Phase II award, subject to advance approval in writing by the funding agreement officer.

Awards:

Phase I Awards:

The objective of this phase is to establish the technical merit and feasibility of proposed research or R & D efforts and to determine the quality of performance of the small business grantee organization prior to providing further federal support in Phase II. For Phase I, a minimum of two-thirds of the research or analytical effort must be performed by the SBC. Period of performance normally should not exceed 6 months. However, agencies may provide a longer performance period where appropriate for a particular project. Generally, a Phase I award may not exceed \$100,000.

Phase II Awards:

The objective of this phase is to continue the research or R & D efforts initiated in Phase I. Funding shall be based on the results of Phase I and the scientific and technical merit and commercial potential of the Phase II application. For Phase II, a minimum of one-half of the research or analytical effort must be performed by the SBC. Period of performance under Phase II is a subject of negotiation between the SBC and the issuing agency. The duration of Phase II normally should not exceed 2 years. However, agencies may provide a longer performance period where appropriate for a particular project. Generally, a Phase II award may not exceed \$750,000.

Since SBIR small business applicants may choose to collaborate with a research institution, there are some opportunities for UAHuntsville faculty to participate in an SBIR program through subcontracts to UAHuntsville from the small business. This is the preferred manner of faculty participation in SBIR programs. This avoids an accusation of 'appropriation of opportunity' against the faculty member in a conflict of interest review.

However, UAHuntsville faculty may be able to participate in the research at the small business (typically on a consulting basis), and also conduct research at UAHuntsville as long as there is

clear distinction in the scope of the work between activities performed at UAHuntsville and the activities performed at the company site. This is made clear through the filing of the UAHuntsville Request to Perform Consulting Activity, the clear description of the consulting work to be performed and the advance written approval of the appropriate UAHuntsville Vice President. It is emphasized that mere submission of a consulting request does not guarantee that approval will be granted. No work should be commenced with external entities until written approval has been received from the appropriate Vice President. Note that UAHuntsville faculty consulting, if allowed, does not itself allow the faculty member to meet the eligibility requirements to serve as PI for the SBC.

Frequently Asked Questions for Faculty Interested in Pursuing an SBIR:

- Can I be the PI on a small business's SBIR proposal?

Not if you remain a full time employee of the University during the performance period of the award. The PI for the small business must be employed by it for more than 50% of the PI's total employed time. (Please see the SBIR eligibility requirements to serve as PI and fully understand your employment classification at the University.) You can be the PI on the SBIR University subcontract with the small business if the business is not owned by or otherwise affiliated with you.

- Can I consult for a small business in an SBIR proposal?

Yes, as long as the engagement is in accordance with the University policy on Consulting in Section 9.3 of the Faculty Handbook, University Conflict of Interest policy in Section 7.15.3 and Appendix I and advance written approvals are granted. Approval for consulting is discretionary and should not be assumed to be guaranteed. Note that time limitations for consulting are applicable and the engagement should not compete with the University if the same work can be reasonably conducted through a funded research proposal at the University.

- Can my owned or affiliated small business subcontract with the University?

Yes, in fact subcontracting is the only way the University should be involved in any SBIR. A faculty member cannot be the PI on the University subcontract with his/her owned or affiliated small business. It is important to also note, that the business official (e.g., the person who has the authority to submit proposals and negotiate contracts for a small business) that is submitting an SBIR subcontract proposal cannot be a University employee since employees with financial interests in outside organizations cannot participate in or influence business decisions between that business and the University. You should review the Alabama Ethics Act and most specifically a public employee using his/her position for personal gain.

- Are there restrictions regarding the type of work or research that can be conducted?

Yes. The small business will be required to certify that it has not previously been paid nor is currently being paid for essentially equivalent work by any agency of the Federal Government. Failure to report essentially equivalent or duplicate efforts can lead to the termination of contracts/awards or civil or criminal penalties. **Essentially Equivalent Work:** Occurs when (1) substantially the same research is proposed for funding in more than one contract proposal or grant application submitted to the same Federal agency; (2) substantially the same research is submitted to two or more different Federal agencies for review and funding consideration; or (3) a specific research objective and the research design for accomplishing an objective are the same or closely related in two or more proposals or awards, regardless of the funding source.

- Can I use University resources, such as computers, offices, labs, staff or students, for work related to an SBIR?

Consulting engagements cannot use University resources. In order to use University resources to support the work of the small business, a formal subcontract agreement under which the small business will compensate the University for all expenses incurred, including full indirect costs, must be signed by the appropriate University and small business personnel. Additionally, if you are intending to involve graduate students to work on the project, additional issues need to be resolved prior to any subcontracting proposals being submitted or work commenced (see also FAQ on graduate students below).

- Can University students be involved with an SBIR project for a faculty owned or affiliated small business?

Only if University students are identified for University subcontract work in the proposal stage, and the same must be disclosed and terms established by the Dean of the Graduate School and Dean of your College at the time of your Conflict of Interest Disclosure filing and approval.

Further, when including graduate students on an SBIR project, you should consider each of the following questions: 1) Would the terms of the SBIR agreement interfere with the student's ability to complete and publish his or her thesis or dissertation? 2) If it does, but not for more than six months, does the graduate student understand and accept the terms of the agreement? 3) If the delay is for longer than six months, is the student in the position of feeling pressured to accept terms because of the faculty member's position? 4) Is the student aware of the University's policy on patents rights and the specific terms of this SBIR agreement? The answers to the preceding questions become particularly critical if you have any position of authority in relation to the student, e.g., dissertation committee chair or member. Committee membership that may involve any relationship to the small business must be approved by the VP for Academic Affairs or his/her designate.

- What disclosures do I have to make to University officials?

In accordance with the Conflict of Interest policy (Appendix I, Faculty Handbook), faculty members are required to disclose potential conflicts of interest and/or commitment to their Chair and Dean on an annual basis for each instance of a potential COI. And specifically, the faculty member must disclose substantial ownership of a private business which is engaged in activities that are based primarily on the faculty member's background and qualifications which are essential to a faculty member's position at the University. Any COI must be addressed and written approval from the appropriate Vice President obtained, prior to initiation of tasks. Depending on the nature of the disclosure, several successive higher levels of review may also be involved. In all cases, disclosure does not, in and of itself, remove the conflict or protect the employee.

- Are there other policies I should be aware of?

You will want to be aware of the policies covered in the Faculty Handbook, Conflict of Interest and Consulting (previously referenced) and particularly the University's Patent Policy (Appendix G) and the Copyright Policy (Appendix H) regarding disclosure of discoveries and inventions, patents and computer software. If you are a Staff member and not classified as a faculty member, you should also be aware of comparable policies in the Staff Handbook and the Alabama Ethics Act.

- What about rights to data, copyrights and patents?

Currently, SBIR federal regulations specify that the rights to data, copyrights, and patents rest with the small business. However, because UAHuntsville is a state institution and cannot transfer state resources for private gain, the University would negotiate language in any subcontract from a small business to obtain compensation for any rights developed by University employees in the course of their University employment. (See question 3 above for more information on the subcontract.)

- What portion of my salary can the University cover if I serve as the PI for the small business?

If you are the principal investigator for the small business under an SBIR, you can only maintain a maximum of 49 percent appointment with the University. The 49 percent must be for University-related business and must not include compensation for work performed in relation to the small business. As outlined on the first page under "Eligibility," the PI must have primary employment with the small business, which is defined as an appointment of 51 percent or greater. Written Approval to serve as PI subject to these restrictions is granted by the appropriate Vice President; approval is not automatic and will be considered on the basis of value to the University in each case.

- How are my fringe benefits handled if I serve as PI for the small business?

Since the SBIR grants require the faculty member to reduce their University appointment to 49 percent, or less, participation in University sponsored fringe benefit plans such as retirement and group insurance may be terminated. You should fully discuss your plans with the University Department of Human Resources before committing to serve as PI.

- How can I get more information?

Specific agency websites for SBIR programs can be accessed at www.sbir.gov.

Additional information is also available at <http://www.sba.gov/SBIR/>.

Alabama Ethics Law: <http://ethics.alabama.gov>

- Who can I call?

Office of Sponsored Programs (256) 824-2657

Office of Technology Commercialization (256) 824-6712

Office of University Compliance (256) 824-6845

Office of Counsel (256) 824-6633