Sole-Source Federal Awards

A Special Presentation
for the

2013 APMP NCA Mid-Atlantic Proposal Conference & Expo

22 October 2013

(slides available at www.sbir.us/library.html)

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BASIC UNDERSTANDING

SBIR/STTR are special "set asides" of R&D funds (*already appropriated for R&D*), so there must be more to this set aside than just funding more research.

Upon analyzing the laws enacted by Congress to establish the SBIR and STTR Programs, it becomes clear that this set aside is intended to be an ***"economic development"*** program leading to increased jobs, world competitiveness and the return of enhanced tax revenues to the treasury. In short, this is intended as a classic ***investment in America***,

NOT just a "*research*" program.

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SBIR ADVANTAGES

SBIR

is **the most important** source of early-stage, technology venture financing for America's entrepreneurs.

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It’s Like



A Dream Come True

Maximizing Award Value

Understanding of the legal foundation(s) is **critical** to securing you rights under

SBIR/STTR

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Legal Foundations Include

(important, but not complete list)

- Small Business Innovation Development Act of 1982 (SBIDA), Public Law 97–219 (codified at 15 U.S.C. 638)
- Small Business Research and Development Enhancement Act of 1992, Public Law 102-56
- Small Business Innovation Research Program Reauthorization Act of 2000, Public Law 106–554
- Small Business Administration Small Business Innovation Research Program Policy Directive (September 24, 2002)
  - clarified Phase III rights - carries the force of law
- National Defense Authorization Act for Fiscal Year 2012 Public Law 112-81. Section 5001, Division E of the Defense Reauthorization Act -- "SBIR/STTR Reauthorization Act of 2011"
- Small Business Administration's Small Business Innovation Research (SBIR) Program Policy Directive October 18, 2012 - carries the force of law
- 13 CFR Part 121 as amended by Federal Register Vol. 77, No. 248 Thursday, December 27, 2012.

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It's The Law - 1 *

"SBA amends section 4© of the Policy Directive to be clear in the definition, application, and status of Phase III awards. Accordingly, section 4© provides that 'SBIR Phase III refers to work that derives from, extends, or logically concludes *effort(s)* performed under prior SBIR funding agreements.' "

"In addition, SBA has amended the Directive to state that an agency official may determine, using the Directive's guidance, whether a contract or other funding agreement is a Phase III award."

** Federal Register, Tuesday, September 24, 2002, Part IV, Small Business Administration, Small Business Innovation Research Policy Directive; Notice*

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It's The Law - 2 *

"SBA has revised the Directive to provide that *a J&A is not required* to fund an SBIR Phase III project, but if an agency wishes to prepare one, it is sufficient to state for purposes of a Justification and Approval pursuant to FAR 6.302–5, that 'the project is an SBIR Phase III award that is derived from, extends, or logically concludes efforts performed under prior SBIR funding agreements and is authorized under 10 U.S.C. 2304(b)(2) or 41 U.S.C. 253(b)(2).' "

** Federal Register, Tuesday, September 24, 2002, Part IV, Small Business Administration, Small Business Innovation Research Policy Directive; Notice*

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It's The Law - 3 *

"SBA has reviewed these comments and believes the Directive is clear: 'there is *no limit on the number, duration, type, or dollar value* of Phase III awards made to a business concern,' or '*on the time that may elapse* between a Phase I or Phase II award and Phase III award, or between a Phase III award and any subsequent Phase III award.' "

** Federal Register, Tuesday, September 24, 2002, Part IV, Small Business Administration, Small Business Innovation Research Policy Directive; Notice*

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It's The Law - 4 *

"The small business size limits for Phase I and Phase II awards do not apply to Phase III awards."

"For Phase III, Congress *intends* that agencies or their Government owned, contractor-operated facilities, Federally-funded research and development centers, or Government prime contractors that pursue R/R&D or production developed under the SBIR Program, *give preference*, including sole source awards, to the awardee that developed the technology."

** Federal Register, Tuesday, September 24, 2002, Part IV, Small Business Administration, Small Business Innovation Research Policy Directive; Notice*

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It's The Law - 5 *

"Phase III award may be for products, production, services, R/R&D, or any combination thereof"

"Even if a competition is held, if the awardee was a Phase II SBIR awardee and the contract is for work that derives from, extends, or logically concludes that firm's work, the contract must have all SBIR Phase III status and data rights."

** Federal Register, Tuesday, September 24, 2002, Part IV, Small Business Administration, Small Business Innovation Research Policy Directive; Notice*

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It's The Law - 6 *

"The Act requires reporting to SBA of all instances in which an agency pursues research, development, or production of a technology developed by an SBIR awardee, with a concern other than the one that developed the SBIR technology."

"SBA will report such instances, including those discovered independently by SBA, to Congress."

** Federal Register, Tuesday, September 24, 2002, Part IV, Small Business Administration, Small Business Innovation Research Policy Directive; Notice*

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It's The Law - 7 *

"This notice requirement also applies to technologies of SBIR awardees with SBIR funding from two or more agencies where one of the agencies determines to pursue the technology with an entity other than that awardee."

" 'funding agreement' identifies the following three award instruments: contract, grant, and cooperative agreement"

** Federal Register, Tuesday, September 24, 2002, Part IV, Small Business Administration, Small Business Innovation Research Policy Directive; Notice*

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It's The Law - 8 *

"**To the greatest extent practicable**, agencies or their Government-owned, contractor-operated facilities, Federally-funded research and development centers, or Government prime contractors that pursue R/R&D or production developed under the SBIR Program, shall issue Phase III awards relating to technology, ***including sole source awards***, to the SBIR awardee that developed the technology. Agencies shall document how they provided this preference to the SBIR awardee that developed the technology."

** National Defense Authorization Act for Fiscal Year 2012, Public Law 112-81. Section 5001, Division E of the Defense Reauthorization Act -- "SBIR/STTR Reauthorization Act of 2011"*

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It's The Law - 9 *

"Agencies, their Government-owned, contractor-operated facilities, or Federally-funded research and development centers, that intend to pursue R/R&D, production, services, or any combination thereof of a technology developed under an SBIR award, with an entity other than that SBIR awardee, must notify SBA in writing prior to such an award. This notification must include, at a minimum:

(i) The reasons why the follow-on funding agreement with the SBIR awardee is not practicable;

(ii) the identity of the entity with which the agency intends to make an award to perform research, development, or production; and

(iii) a description of the type of funding award under which the research, development, or production will be obtained."

** National Defense Authorization Act for Fiscal Year 2012, Public Law 112-81. Section 5001, Division E of the Defense Reauthorization Act -- "SBIR/STTR Reauthorization Act of 2011"*

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SBIR Phase III Definition

1) Federal Government-funded P-III applications are

   - work that "derives from, extends, or logically concludes **effort(s)** performed under prior SBIR funding agreements" that are funded by

   - any source of Federal funds except SBIR/STTR set-aside funds

2) Commercial, state/local Govt., private or foreign funded applications of SBIR technology or additional efforts as performed under SBIR/STTR projects

(NOTE: the SBIR Policy Directive does not apply to SBIR firm's efforts funded by non-Federal sources)

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SBIR Firms As Preferred Vendors - 1

- **Takes Advantage Of "INVESTED" R&D funds**: ~ 2.7% of each agency's extramural R&D budgets (*get the tax back* mentality).
- **Freedom of Choice - 1**: "***Relevant***" products and services (SBIR Phase III down-selects),of any $ amount, may be procured directly from SBIR/STTR firms, without competition.
- **Freedom of Choice - 2**: Affords the Contracting Officer the option of "*selecting*" a preferred vendor without the risk of having to work with a low-price, sub-par competition winner.
- **Freedom of Choice - 3**: Even when several SBIR firms are eligible, individual vendors may be "selected" and funded without competition.
- **Freedom of Choice - 4**: Small business size limits for Phase I & II awards DO NOT apply to Phase III awards.
- **Freedom of Choice - 5**: Phase III awards may be for products, production, services, R/R&D or any combination thereof.

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SBIR Firms As Preferred Vendors - 2

- **Fastest & Lowest Risk Procurement Process - 1**: Sole-source procurements may be made, any time, without the need for a J&A.

- **Fastest & Lowest Risk Procurement Process - 2**: The current *Procurement Authority* has *sole discretion* as to whether the downselect is "relevant" to original SBIR/STTR work.

- **Fastest & Lowest Risk Procurement Process - 3**: Almost all funding mechanisms are pre- approved for down-select including, contracts, grants and cooperative agreements.

- **Helps Meet Procurement Goals Faster**: Many SBIR/STTR firms are also SDVOBs, MBEs, woman owned, 8(a), etc., which can compound to contribute significantly (via larger awards) to an agency's procurement goals, as needed.

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Straight Forward Process

1) Find opportunities to bid – via solicitations or sell idea to government – at a participating SBIR / STTR agency (USDA, DoC, DoE, DoEdu, DoD, EPA, DHS, NIH, NASA, NSF or DoT).

2) Apply for, and win, an SBIR / STTR award (contract or grant).

3) Acquire reputation for good performance (on-time, under budget, high quality) especially with the SBIR / STTR project.

4) Find an opportunity to solve problem/enhance a mission within the government (any agency) or one of its prime contractors.

5) Connect the dots by teaching the contact about the freedoms they have under SBIR / STTR law to deal with you. Convince them that doing this is both a common practice and "career-safe."

6) Take the money, do a good job, then go back for more (one SBIR at ANY agency is enough to get a lifetime of sole-source awards from ALL agencies).

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FY 2014 Agency SBIR Schedules

(subject top change by the agencies)

AGENCY		OPEN	CLOSE
USDA		Jun 20, 2014	Sep 6, 2014
DoC	(NOAA)	Nov 13, 2013	Jan 15, 2014
	(NIST)	Nov 20, 2013	Jan 28, 2014
DoD	(14.1)	Dec 12, 2013	Jan 16, 2014
	(14.2)	May 24, 2014	Jun 26, 2014
	(14.3)	Aug 23, 2014	Sep 26, 2014
Edu	- grants	Jan 5, 2014	Mar 5, 2014
	- contracts	Jan 5, 2014	Mar 5, 2014
DoE		Aug 13, 2014	Oct 15, 2014
		Nov 25, 2013	Feb 4, 2014
EPA		Jun 19, 2014	Aug 16, 2014
DHS	(14.1 -S&T)	Nov 14, 2013	Jan 6, 2014
	(14.2 -S&T)	May 2, 2014	Jun 28, 2014
NASA		Nov 19, 2013	Jan 16, 2014
NSF	(2014 #1)	Nov 1, 2014	Dec 11, 2014
	(2014 #2)	May 8, 2014	Jun 8, 2014
PHS/NIH	- contracts	Aug 14, 2014	Nov 8, 2014
	- grants	Jan 14, 2013/14	Apr 7, 2014
			Aug 5, 2014
			Dec 5, 2013/14
DoT		Jan 25, 2014	May 1, 2014

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Get your own pocket schedule from the speaker.

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Hard To Succeed

- Many apply – few win (historically only 1 in 9 wins funding).
- New law is exacerbating the competitive situation (*moving toward a 1 in 20 win ratio, or maybe worse*)
  - GOOD NEWS: Feds increasing the budgets for SBIR & STTR
  - BAD NEWS: Feds are finding many ways to spend their budgets on other than Phase I awards (*the entry point*).
- We contend that few applicants can now win awards unless they really know how (*philosophies, tricks, training, special tools, professional techniques, etc.*) and invest the effort to do it right.
- The time and energy needed to win an SBIR/STTR is ***way out of proportion*** to the award size limits, but is actually very small for pursuit of an UNLIMITED, sole-source position with the world's largest purchaser of goods and services *(worth potentially $billions)*.

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Must Know & Protect Your Rights

SBIR Data Rights Legend in accordance with DFARS 252.227-7018 (JUNE 1995)

Contract Number : _____

Contractor Name: _____

Contractor Address: _____

Expiration of SBIR Data Rights Period: _____

[Contractor enters expiration date for the SBIR data rights period (up to 4 years later on non-DoD and 5 years later on DoD SBIR/STTR.]

The Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend are restricted during the period shown as provided in paragraph (b)(4) of the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovative Research (SBIR) Program clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

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More Information

These slides are available for download and *more information* can be found at www.sbir.us/library.html

- 5 Nov. 2013: *How To Win SBIR Awards*(SM) event Rockville, MD with two special focus days:
  - 6 Nov. 2013: focus on NIH *(afternoon)*
  - 7 Nov. 2013: focus on NSF *(morning)*
- 10 Dec. 2013: *How To Win SBIR Awards*(SM)
  - DoD focus, Hanover, MD *(same day)*
- 14-16 Nov. SBIR Lab(TM) *for NIH 2014.2* - Hanover, MD
- 15 January SBIR Counselor(SM) - Blacksburg, VA
- Registration more info is found at www.sbir.us.

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Why Choose The SBIR Center?

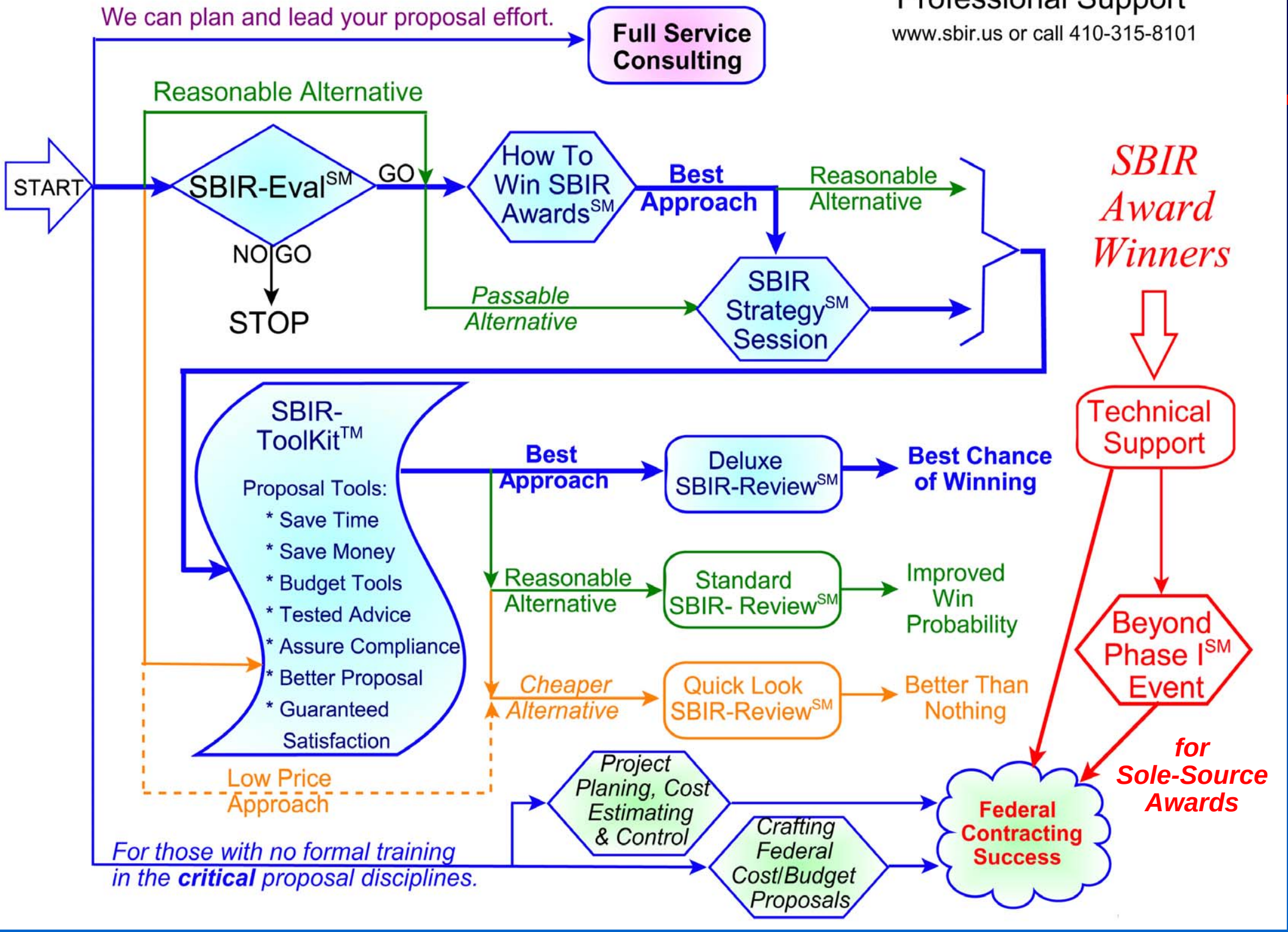
UNIQUE IN THE INDUSTRY

- ✔ make the required investment to stay up-to-date in SBIR/STTR
- ✔ very public, highly-visible, transparent, professional reputation (*seminars, conf. presentations, Web sites, news letters, etc.*)
- ✔ bring innovative tools and unique resources to SBIR/STTR
- ✔ have C-level executive experience (*at several technology firms*)
- ✔ bring years of hands-on research & federal marketing experience
- ✔ offer R&D project planning, estimating & management expertise
- ✔ provide the only true proposal professional in the SBIR business (APMP = *ongoing training, certification, code of ethics, publications, etc.*)
- ✔ only firm in the industry to offer satisfaction guarantees

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Flow Chart of Support Alternatives

SBIR Resource Center(R)
Professional Support
www.sbir.us or call 410-315-8101



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SBIR Resource Center®
5 Linda Lane
Severna Park, MD 21146
TEL: (410) 315-8101
FAX: (410) 315-9560
E-mail: SBIR@sbir.us

www.sbir.us or just **"SBIR.us"**

When You're Serious About SBIR

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