**FINDINGS, DETERMINATION, AND AUTHORIZATION FOR ADVANCE PAYMENTS FOR A CLASS OF CONTRACTS (SBIR Phase I)**

This Determination and Findings is not an approval of a program or of specific procurements. It authorizes advance payments for a class of contracts described herein only if, in accordance with established agency regulations and procedure, the procurement has been authorized and funds have been made available for the purpose.

Upon the basis of the following findings and determination, the making of advance payments, without interest, under the proposed class of contracts described below is in the public interest.

FINDINGS

The undersigned hereby finds that:

1. The NIH proposes to award negotiated fixed-price Research/Research and Development (R/R&D) contracts with an estimated amount of $150,000, including fee, for each contract under Phase I of the Small Business Innovation Research (SBIR) Program reauthorized by the enactment of the National Defense Authorization Act (Public Law 112-81), Division E – SBIR and STTR Reauthorization. The contracts, which cover a wide number of different topic areas, will normally be for a period of six months.

2. The objectives of Phase I SBIR contracts are to conduct feasibility-related experimental or theoretical R/R&D related to described agency requirements.

3. The National Defense Authorization Act (P.L.112-81) requires the NIH, among other agencies, to establish an SBIR Program by reserving a statutory percentage of its Extramural R/R&D budget for award to small business concerns for R/R&D projects of interest to the NIH, with potential for commercial applications. Major purposes of P.L. 112-81 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 business concerns in technological innovation, and (4) increase private sector commercialization of innovations derived from Federal R/R&D. The best way to facilitate innovation to meet these requirements with uniformity and consistency is to provide advance payments to each contractor.

4. It is anticipated that many, if not all, of the small business concerns responding to the solicitation will require financial assistance in some form. Moreover, incremental payments on the basis of work accomplished or progress achieved toward completion are not practical due to the short period of performance and lack of discrete indicators of performance other than the final report, which is due at the final expiration date of the contract.

5. Advance payments may be made by either of the two following methods at the discretion of the Contracting Officer, within the limitations outlined below:

    a. Advance payments may be made on a monthly basis. The total of all monthly advance payments may not exceed 90 percent of the contract price. Advance payments are required by the contractor in order to perform the contract.

    OR

    b. Advance payments may be made for up to three months of estimated expenditures on a case-by-case basis, only if the following conditions are met:

        i. The Contracting Officer must obtain a Financial Capability Review from the Special Reviews Branch, DFAS, OAMP. The Special Reviews Branch will provide the Contracting Officer with input as to whether they concur with the proposed advance payment schedule.

        ii. The Director, Office of Acquisitions, based on the advice provided by the Special Reviews Branch, will make the final determination as to the suitability of the proposed advance payment schedule. This determination must be documented in the contract file, with a copy provided to the Special Reviews Branch, DFAS.

        iii. DFAS may conduct a review of these SBIR Phase I awardees to determine if there are any financial concerns with the payment schedule during performance.

6. The advance payments are necessary for prompt and efficient performance of the contract, which will benefit the Government.

7. The "Advance Payments" clause contains appropriate provisions for the protection of the Government's interest. This includes provisions that the Government will have a lien, paramount to all other liens, upon (i) the supplies contracted for, and (ii) any material or property acquired for the performance of the contract. Such security is deemed to be adequate.

## DETERMINATION

Upon the basis of the foregoing findings and pursuant to the authority under HHSAR 332.402(e), the undersigned hereby determines that the making of the proposed advance payment, without interest, is in the public interest.

AUTHORIZATION

Advance payments for a class of contracts, either on a monthly basis, the total amount of which may not exceed 90 percent of the contract price, or for up to three months of estimated expenditures, on a case by case basis, as prescribed in Item 5b, above, are hereby authorized for each Phase I contract awarded under NIH's SBIR Program for Fiscal Year 2013 pursuant to the National Defense Authorization Act (Public Law 112-81), Division E – SBIR and STTR Reauthorization and upon the terms and conditions as contained in the Advance Payments clause of the contract.

5/7/13
Date

for Diane J. Frasier
Head of the Contracting Activity and
Director, Office of Acquisition Management
and Policy, OA