Attachment

DOC Approved Deviations from Negotiated Indirect Cost Rates

1. National Institute of Standards and Technology (NIST).

A. **Program Description.** The Small Business Innovation Research (SBIR) program was originally established in 1982 by the Small Business Innovation Development Act (P.L. 97-219), codified at 15 U.S.C. § 638. It was then expanded and extended by the Small Business Research and Development (R&D) Enhancement Act of 1992 (P.L. 102-564), and received subsequent reauthorization and extensions, the most recent of which extends the SBIR program through 2022. (P.L. 114-328). The statutory purpose of the SBIR Program is to strengthen the role of innovative small business concerns in Federally funded research or research and development (R/R&D). Specific program goals 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 businesses and by women-owned small businesses in technological innovation; and (4) increase private sector commercialization of innovations derived from Federal R/R&D, thereby increasing competition, productivity, and economic growth. Eleven Federal agencies, to include NIST, implements SBIR by setting aside a portion of the extramural research and development (R&D) budget each year to fund research applications from small science and technology-based entities. Through this set aside, NIST funds two SBIR programs – SBIR Phase I and SBIR Phase II. The SBIR Phase I awards provide up to $100,000 to complete a feasibility study within a six-month period of performance. The SBIR Phase II awards cover the actual R&D phase. These awards provide a maximum of $400,000 for a two-year period of performance.

B. **Justification for limiting Indirect Costs.** SBIR awards are made to small for-profit entities that often have no prior contracting or federal assistance relationship with the Federal government, which means NIST would be the cognizant federal agency, responsible for negotiating an indirect cost rate. This creates a potential problem for NIST because of the specific SBIR program requirements.

The brief six-month period of performance of the SBIR Phase I program makes the timeframe for indirect cost rate negotiation unreasonable. In most cases, the project would end before the indirect cost rate negotiation could be completed. In addition, while the SBIR Phase II program provides a maximum award amount of $400,000 and a two-year period of performance, only Phase I grantees who completed their project are eligible for a Phase II grant. Maintaining a set indirect cost rate allows the recipient to consistently charge costs.

As a result of the specific limitations in the SBIR program (outlined above), NIST does not negotiate indirect cost rates with SBIR Phase I awardees. Phase I recipients that do not have an approved negotiated indirect cost rate agreement may propose an indirect cost rate of up to 40 percent of total direct costs, which will be accepted by NIST without further negotiation. The 40 percent will allow recipients to recover a reasonable amount of indirect costs for their projects and is consistent with the approach taken by other agencies that award SBIR grants, including NIH. Phase II awardees are given the same option of a set 40 percent indirect cost rate however, if the Phase II awardee requests more than 40 percent, and NIST is the cognizant Federal agency, NIST will negotiate an indirect cost rate with that awardee.

C. **Governance Process.** NIST's process for communicating its indirect cost rate limitations for the SBIR program is as follows:

   i. The policy is set forth here on the NIST OAAM/GMD website.
   ii. The policy is published in the notice of funding opportunity for each competition.
   iii. The policy is included as a specific award condition on each award, which may take the form of incorporating by reference into the award terms the notice of funding opportunity containing the policy for the indirect cost rate deviation.
   iv. Posting deviations on OAM website.

2. National Oceanic and Atmospheric Administration (NOAA).

A. Program Description. The Small Business Innovation Research (SBIR) program was originally established in 1982 by the Small Business Innovation Development Act (P.L. 97-219), codified at 15 U.S.C. § 638. It was then expanded and extended by the Small Business Research and Development (R&D) Enhancement Act of 1992 (P.L. 102-564), and received subsequent reauthorization and extensions, the most recent of which extends the SBIR program through 2022. (P.L. 114-328). The statutory purpose of the SBIR Program is to strengthen the role of innovative small business concerns in Federally funded research or research and development (R/R&D). Specific program goals 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 businesses and by women-owned small businesses in technological innovation; and (4) increase private sector commercialization of innovations derived from Federal R/R&D, thereby increasing competition, productivity, and economic growth. Eleven Federal agencies, including NOAA, implement SBIR by setting aside a portion of the extramural research and development (R&D) budget each year to fund research applications from small science and technology-based entities. Through this set aside, NOAA funds two SBIR programs – SBIR Phase I and SBIR Phase II. The SBIR Phase I awards provide up to $150,000 to complete a feasibility study within a six-month period of performance. The SBIR Phase II awards cover the actual R&D phase. These awards provide a maximum of $500,000 for a two-year period of performance.

B. Justification for limiting Indirect Costs. SBIR awards are made to small for-profit entities that often have no prior contracting or federal assistance relationship with the Federal government, which means NOAA would be the cognizant federal agency, responsible for negotiating an indirect cost rate. This creates a potential problem for NOAA because of the specific SBIR program requirements.

The brief six-month period of performance of the SBIR Phase I program makes the timeframe for indirect cost rate negotiation unreasonable. In most cases, the project would end before the indirect cost rate negotiation could be completed. In addition, while the SBIR Phase II program provides a maximum award amount of $500,000 and a two-year period of performance, only Phase I grantees who completed their project are eligible for a Phase II grant. Maintaining a set indirect cost rate allows the recipient to consistently charge costs.

As a result of the specific limitations of the SBIR program (outlined above), NOAA does not negotiate indirect cost rates with SBIR Phase I awardees. Phase I recipients that do not have an approved negotiated indirect cost rate agreement may propose an indirect cost rate of up to 40 percent of total direct costs, which will be accepted by NOAA without further negotiation. The 40 percent will allow recipients to recover a reasonable amount of indirect costs for their projects and is consistent with the approach taken by other agencies that award SBIR grants, including NIH. Phase II awardees are given the same option of a set 40 percent indirect cost rate, however, if the Phase II awardee requests more than 40 percent, and NOAA is the cognizant Federal agency, NOAA will negotiate an indirect cost rate with that awardee.

C. Governance Process. NOAA's process for communicating its indirect cost rate limitations for the SBIR program is as follows:

i. The policy is published in the notice of funding opportunity for each competition.
ii. The policy is included as a specific award condition on each award, which may take the form of incorporating by reference into the award terms the notice of funding opportunity containing the policy for the indirect cost rate deviation.
iii. Posting deviations on OAM website.

3. International Trade Administration (ITA).

A. **Program Description.** The Market Development Cooperator Program (MDCP) awards include financial and technical assistance to support projects that help U.S. firms export. An MDCP award establishes a partnership between ITA and non-profit industry groups such as trade associations and chambers of commerce. Such groups are particularly effective in reaching small- and medium-size enterprises (SMEs). ITA provides up to $300,000 in total funds to MDCP to be spent over a 3-5 year project period. A recipient must put up at least a 2-to1 match (approximately 67%). The average actual match is 73%. Historically, the largest group of entities eligible to apply for and receive MDCP funding is trade associations. These groups are funded primarily by dues paid by member companies and from fees collected from industry trade events. Both the constituency of these groups, mostly SMEs, and the focus of much of their activity, industry-promotion, make them ideal to undertake MDCP projects.

B. **Justification for Limiting Indirect Costs.** Trade associations tend to have very low overhead. Most of the trade association MDCP award recipients do not claim indirect costs because such costs are fairly low, the association usually has a fairly small staff, and the administrative burden is not worth the benefit. The indirect cost rates of those associations that do claim such costs generally range from 4 to 7%.

By contrast, MDCP award recipients affiliated with an educational institution usually have very high indirect cost rates ranging from 45 to 65%. Such institutions alone have never been eligible to receive MDCP awards, however, as indicated in the MDCP federal funding opportunity notice:

“[O]rganizations that are part of or affiliated with an educational institution for administrative, accounting, financial, legal, or logistical reasons may be eligible. Such organizations that are not independent legal entities, for example, an unincorporated organization, that otherwise may be classified under *III.A. Eligible Applicants*, above, as a trade association, non-profit industry association, or state department of trade and its regional associations, are eligible.”

So, while the educational institution itself is not eligible, an entity affiliated with it that would otherwise be eligible could be found to be eligible. One example is a Small Business Development Center (SBDC). There are scores of SBDCs around the United States that serve the SME community that ITA seeks to help. Most exist as stand-alone legal entities with their own accounting system but some SBDCs are affiliated with a college or university and use the host institution’s accounting system. Such an SBDC benefits from the high overhead of the host educational institution because the overhead can be claimed as indirect cost and used as part of the required award match. By comparison, a stand-alone SBDC that serves the same type of SME pool would have much lower overhead, which means a lower indirect cost rate.

<u>Higher Indirect Cost Rate Correlates Inversely with Project Performance.</u> The primary measure of MDCP project success is dollar value of exports generated by the project. On average, MDCP award recipients affiliated with an educational institution have project results well below those reported by other types of MDCP award-recipients, especially trade associations. So, on average, the higher the indirect cost rate claimed, the lower the dollar value of exports that a project generates.

The 10% indirect cost rate is the only rate that may be claimed by MDCP award recipients. The rate is applied to total direct costs. This applies to all MDCP award recipients, including those that already have an indirect cost rate higher than 10% certified by another cognizant agency. This 10% indirect cost rate cap is implemented for the following reasons:

i. High overhead is not required to achieve satisfactory results from an MDCP project. MDCP awards are for export-promotion projects. No scientific research is involved. Minimal organizational expenses are all that are relevant or necessary for an organization to be able to successfully conduct export expansion activities.
ii. MDCP recipients with low overhead have a greater match burden than recipients with high overhead. Stand-alone organizations have low overhead. Organizations associated with an educational institution generally have higher overhead to account for the great cost of maintaining such institutions. Because a high overhead translates to a high indirect cost rate, an MDCP recipient with a high indirect cost rate can significantly reduce the amount of match that must come from cash or in-kind sources. This means that a stand-alone organization that is identical in its purpose and staffing to an organization that is associated with a university would have to put up disproportionately more cash and/or in-kind match than would the university-associated organization. This puts the stand-alone organization at an unfair disadvantage.

iii. ITA encourages recipients to cover participant travel and other support costs. Using an MTDC base would discourage it. For MDCP projects, the greater number of SME participants in project activity, the greater the export results, the primary measure of performance. To maximize participation in MDCP project activity, recipients often cover part of the travel, lodging, and registration cost of an SME to participate in project events like trade shows abroad and outbound trade missions. Participating in such activity is how recipients help SMEs to generate export sales, the objective of all MDCP projects. Covering some of the support costs is how recipients help participant SMEs meet foreign buyers and sign sales contracts. Restricting recipient indirect cost basis to MTDC would limit the number of participants that a recipient helps by covering their support costs because MTDC specifically excludes support costs. As a hypothetical, for the same federal share, a recipient allowed to base its indirect cost claim on total direct cost could support 22 participants while it may only be able to support 20 if the basis is limited to MTDC. This is because, without the benefit of leveraging indirect costs for part of its 2-for-1 required match, it would make undertaking the project more expensive for small SME-serving recipients. As a result, the recipient would be constrained to assist fewer SMEs.

iv. Use of an MTDC base would benefit larger recipients over smaller ones. Without the benefit of claiming indirect costs on travel expenses of participants, often a substantial part of an MDCP project budget, smaller recipients would be at a disadvantage compared to larger, better financed ones. Again, MDCP's goal is to help SMEs export. And very often, the most successful organizations to facilitate this are recipients that tend to have small staff and modest revenue. Requiring recipients to use an MTDC could have the unintended effect of a return to favoring recipients affiliated with colleges and universities, the entities that had the advantage of the big NICRs before ITA instituted its policy of requiring all recipients to claim indirect costs with the same 10% of total direct costs.

C. **Governance Process.** ITA's process for communicating its indirect cost rate limitation to MDCP award recipients is as follows:

i. The policy is set forth here on the MDCP website.
ii. The policy is published in the federal funding opportunity notice prior to each competition.
iii. An example of how to claim the 10% indirect cost rate is included on the MDCP website.
iv. Posting deviations on OAM website.

4. National Telecommunications and Information Administration (NTIA)

A. **Program Description.** The Tribal Broadband Connectivity Program (TBCP) is a federal grant program authorized by the Consolidated Appropriations Act, 2021, Division N, Title IX, Section 905(c), Public Law 116-260, 134 Stat. 1182 (Dec. 27, 2020) (Act). The Tribal Broadband Connectivity Program provides new federal funding for grants to eligible entities, which include a Tribal Government, a Tribal College or University, the Department of Hawaiian Home Lands on behalf of the Native Hawaiian Community, including Native Hawaiian Education Programs, a Tribal organization, or an Alaskan Native Corporation, to expand access to and adoption of: (i) broadband service on Tribal

Land; or (ii) for programs that promote the use of broadband to access remote learning, telework, or telehealth resources during the COVID–19 pandemic. Grant funds available under this program may be used for the following purposes: (A) Broadband infrastructure deployment projects, including support for the establishment of carrier-neutral submarine cable landing stations; and (B) Projects that promote the adoption and use of broadband services, including: (i) affordable broadband programs, such as providing free or reduced-cost broadband service and preventing disconnection of existing broadband service; (ii) distance learning; (iii) telehealth; (iv) digital inclusion efforts; and (v) broadband adoption activities. NTIA will make up to $980,000,000 available for federal assistance under the TBCP.

B. **Justification for Limiting Indirect Costs.** Section 905(c)(6) of the Act establishing TBCP prohibits an eligible entity from using more than two percent (2%) of the grants funds it receives for administrative expenses. For this purpose, the two percent limitation on administrative expenses includes the combined total of indirect costs and direct administrative costs charged to an award. Accordingly, NTIA is required by statute to limit the indirect cost rate recovery to no more than two percent of the grant funds received by a recipient under this program.

C. **Governance Process.** NTIA's process for communicating its indirect cost rate limitation to TBCP award recipients is as follows:

i. The policy is set forth in the federal funding opportunity notice for each Tribal Broadband Connectivity Program competition, which is posted here on the NTIA website.
ii. The policy is included as a specific award condition on each award, which may take the form of incorporating by reference into the award terms the notice of funding opportunity containing the policy for the indirect cost rate deviation.
iii. Posting deviations on OAM website.