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## With Investors Sidelined, More Companies Turn To Uncle Sam

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Frustrated by plunging stock markets and tight-fisted venture capitalists, increasing numbers of early-stage technology and life sciences companies are rediscovering the federal government as a source of start-up capital, R&D, and sales revenues.

Federal agencies fund vast amounts of the research done in this country and consume vast amounts of technology product. Much of their work is performed privately by private contractors and grant recipients. In fact, federal funding has been reported to account for more than half of all basic research in the U.S.

While skittish private investors seek proven concepts, federal agencies are continuing to fund less-certain ventures. Federal agencies hand out billions of dollars in grants to fund projects that serve a public purpose but do not directly benefit the government. When the funding agency expects to be deeply involved in performing the project, funding is often provided through a cooperative agreement. Among the largest sources of grants and cooperative agreements are the National Institutes of Health, the Defense Advanced Research Projects Agency, and the Office of Naval Research. Eligibility requirements, application deadlines, and terms of award vary from program to program.

### **Contracting for Development:**

Frequently, federal agencies sponsor their own research and development. When a federal agency seeks R&D for its own purposes, funding is provided through a contract. For fiscal year 2001, federal agencies reported R&D contracts valued at over \$26.6 billion, including over \$21 billion for Defense Department agencies alone. As Defense needs and those of the new Department of Homeland Security grow, so will contracts from these agencies. Defense programs include dozens of research topics, and the newly created Department of Homeland Security is authorized to establish its own advanced research projects agency awarding up to \$500 million annually.

Contracts are normally subject to the government-wide Federal Acquisition Regulations, which prescribe how projects are defined, how contractors are selected, and what terms and conditions apply. Emerging companies may be pleasantly surprised to find that they are exempt from most of the socio-economic and accounting requirements that apply to large federal contractors. Start-up

companies frequently receive multi-million dollar awards for early-stage R&D work in specific technical areas of interest.

#### **Reserving Funds for Small Business:**

The largest federal agencies that conduct R&D activities are required by law to reserve a portion of their R&D funds for small companies. The billion-dollar-per-year Small Business Innovation Research (SBIR) program is one way agencies meet this obligation. The SBIR program provides grant or contract funding to winning proposals selected by the participating agencies on the basis of innovation, technical merit, and market potential. Startup funding of \$100,000 may be supplemented by “Phase II” awards of up to \$750,000. Agencies issuing SBIR awards currently include the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, and Transportation, as well as the Environmental Protection Agency, NASA, and the National Science Foundation. The related Small Business Technology Transfer (STTR) program provides awards totaling up to \$600,000 to small companies partnered with a non-profit research institution such as a university, private foundation, or federally-funded R&D center.

#### **Making Federal Facilities and Patents Available:**

In addition, other federal laws help emerging companies by making the vast resources of federal R&D facilities available for private commercial use. Federal agencies receive hundreds of patents per year, and they are all available for exclusive or non-exclusive licensing. Through technology transfer programs, companies can obtain patent licenses, R&D facilities and equipment – and even the expertise of the government’s top researchers – at no cost, thereby preserving funds for other needs. Cooperative Research & Development Agreements (CRADAs) are legal agreements that commit federal agency resources – but not cash – for such use by private collaborators.

#### **Retaining Rights in Technological Inventions:**

More than ever before, companies can keep the commercial value of the data, technologies, inventions, and products they develop with federal government assistance. The company may normally obtain title to any invention and the right to use and commercialize any technology developed under a federal assistance agreement, grant, or contract. The agency normally retains a nonexclusive, royalty-free license to use federally-supported inventions for governmental – but not commercial – purposes. With careful negotiation, companies even preserve their ability to sell resulting commercial products to federal government agencies.

#### **Selling Product to the Government:**

Once a product is ready for commercial distribution, companies are tapping the world’s biggest consumer – the U.S. federal government. Federal agencies purchase virtually every product and service, worth a staggering \$200 billion per year. Streamlined contracting procedures, catalog-like “schedule” contracts, and online purchasing networks enable emerging companies to sell directly to multiple federal customers without the cost and burden of repetitive contract negotiations. Federal sales also present significant subcontracting opportunities for innovative young companies that know where to look.

Federal initiatives in defense, homeland security, and health have ensured that federal assistance for emerging companies has increased or remained steady despite the soft economy and federal budget constraints. Experienced advisors can help emerging companies to identify potential federal agency opportunities, arrange promotional demonstrations, and prepare proposals and applications.

For decades, Hale and Dorr has given young companies the guidance to grow. Hale and Dorr LLP is an international law firm with offices in Boston, London, Munich, New York, Oxford, Princeton, Reston, Waltham MA, and Washington. The Hale and Dorr Venture Group handles the unique financial needs of emerging companies. Hale and Dorr's Federal Affairs Practice Group in Washington, DC helps companies to navigate the vast opportunities in federal contracts, grants, cooperative agreements, and technology transfer programs.

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