**FAQs – Patent Costs**

**Q1.** Are patent costs allowed on a Phase I budget?

**A1.** Yes, but only as budgeted if using a 3rd party TABA vendor., and only as a result of IP discovered under the grant.

**Q2**. Are private patent costs allowable?

**A2**. No.

**Q3**. What are the rules for patent costs under a Phase II?

**A3.** TABA funding up to $50,000 can be used for patent costs for those discovered under the Phase I or Phase II efforts.

**Q4**. DoD routinely allows patent costs (discovered under a contract) as an indirect expense. Why is DOE different?

**A4.** The DOE has set up a regulatory conflict by amending FAR Cost Principles with the statement from 2 CFR 910.352:

*For For-Profit Entities, the Cost Principles contained in 48 CFR 31.2 (Contracts with Commercial Organizations) must be followed in lieu of the Cost principles contained in 2 CFR 200.400 through 200.475, except that patent prosecution costs are not allowable unless specifically authorized in the award document. This applies to For-Profit entities whether they are recipients or subrecipients.*

Whereas the Patent clause in each DOE SBIR/STTR grant compels the grantee to allocate a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. the subject invention throughout the world, the DOE doesn’t appear to want to pay the grantee for establishing those rights unless “specifically authorized in the award document”.