

## **Guidance for executing Phase III SBIR/STTR Awards within DOE**

SBIR/STTR Programs Office

March 31, 2020

The Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs (collectively referred to as “Programs”) are authorized by the SBIR/STTR Reauthorization Act of 2011, codified at 15 U.S.C. 638. The Small Business Administration is responsible for developing and issuing SBIR and STTR Policy Directives, (available at sbir.gov). The Programs are designed to provide Federal funding to assist small businesses conduct research and development with the goal of commercializing innovative technologies. The Programs are divided into three Phases; I, II, and III. Only, U.S. for-profit businesses are eligible to participate in the Programs. Although the business must be a small business at time of the award of a Phase I or II, there are no size limitations applicable to Phase III. Within the Department of Energy, Phase I and II of the Programs are administered through the SBIR/STTR Programs Office (ARPA-E administers its own SBIR and STTR programs.) Phase I and II are grants awarded by the Office of Science Integrated Support Center Chicago Office.

Phase I awards provide funding to conduct feasibility related experimental or theoretical R/R&D. Phase II awards provide funding to continue the R/R&D effort from the completed Phase I. Phase III is work that derives from, extends, or logically concludes the effort performed in Phase I or II. Phase III is generally the commercialization effort of the project, which may include sale of products to the Government, but may be additional R/R&D. Any Federal agency may award a Phase III regardless of which Federal agency funded Phase I or II. The Congress of the United States appropriates funds for use in Phase I and II. Neither SBIR nor STTR funds may be used for the Phase III effort.

In addition to providing access to Federal funding, the Programs provide additional incentives and advantages to the participants in the Programs. A Phase III award does not require competition. There are no time limits between a Phase I/II and Phase III. Special Intellectual Property (IP) Rights are afforded to the business. SBIR Technical Data Rights extend to Phase III, and all data generated during the performance of an SBIR or STTR award are retained by the business; the Government must protect the data from disclosure and non-governmental use for twenty (20) years from the award date (whether Phase I, II, or III); and the Government retains a royalty-free License for Government use. The Government may not require a business to give up its data rights in order to obtain a Phase III award. In addition to the IP Rights, the participant is authorized to continue to use Government property (obtained during Phase II) for two (2) years during the performance of Phase III.

In order to protect generated data from release by the Government, Program participants should mark deliverables and proposals with the notice in the terms of their award, a notice similar to the following:

### **20 YEAR SBIR/STTR DATA RIGHTS (2019)**

Funding Agreement No \_\_\_\_\_

Award Date \_\_\_\_\_

SBIR/STTR Protection Period: Twenty years from Award Date

SBIR/STTR Awardee \_\_\_\_\_

This report contains SBIR/STTR Data to which the Federal Government has received SBIR/STTR Technical Data Rights or SBIR/STTR Computer Software Rights during the SBIR/STTR Protection Period and Unlimited Rights afterwards, as defined in the Funding Agreement. Any reproductions of SBIR/STTR Data must include this legend.

When awarding a contract or grant to a Program participant:

The Contract Specialist may obtain Program participation information related to the participant by searching the Small Business Administration's award database at <http://sbir.gov/past-awards> .

The Contract Specialist should obtain a copy of the SBIR or STTR award from the awarding agency to verify the proposed work was initially funded under one of the Programs. Because all data developed in Phase III, along with all data from the previous Phase must be protected for twenty (20) years, if the participant so requests, the participants should not be allowed to affix the above SBIR/STTR Rights Notice on data that is more than twenty (20) years old at time of the Phase III award.

The Contract Specialist must ensure that the work to be performed under a new contract or grant is reviewed by the DOE Program Manager/Officer to determine whether the anticipated work derives from, extends, or logically concludes the effort performed in Phase I or II.

The Contract Specialist should refer the proposal to their Intellectual Property Law Counsel for review and recommendation for inclusion of the appropriate IP clauses or terms and conditions.

If the Phase I or II was awarded by another Federal agency, then the Contract Specialist should inform the other agency's Contracting Office that a Phase III is being awarded.

Contract Specialists having general questions concerning SBIR/STTR Special Intellectual Property rights may contact CH-IPL at (630)-252-2171 or [chicago-ip@ch.doe.gov](mailto:chicago-ip@ch.doe.gov).