

Guidance for executing Phase III SBIR/STTR Awards within DOE

SBIR/STTR Programs Office

December 12, 2016

The Small Business Innovative 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 four (4) years from the delivery of the last deliverable under the agreement (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:

SBIR/STTR Rights Notice (JAN 2015)

These SBIR/STTR data are furnished with SBIR/STTR rights under Award No. _____ (and subaward _____, if appropriate). Unless the Government obtains permission from the

Recipient otherwise, the Government will protect SBIR/STTR data from non-governmental use and from disclosure outside the Government, except for purposes of review, for a period starting at the receipt of the SBIR/STTR data and ending after 4 years, unless extended in accordance with 48 CFR 27.409(h), from the delivery of the last technical deliverable under this award. In order for SBIR/STTR data to be extended by an SBIR/STTR Phase III award, the Recipient must properly notify DOE's Office of Scientific and Technical Information (OSTI) before the end of the previous protection period. After the protection period, the Government has a paid-up license to use, and to authorize others to use on its behalf, these data for Government purposes, but is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. This notice shall be affixed to any reproductions of these data, in whole or in part.

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 and the last deliverable was received within four (4) years from start date of the new award. While there is no time limit for the award of a Phase III, the Government's obligation to protect data generated in Phase I or II is limited to four (4) years. Because all data developed in Phase III, along with all data from the previous Phase (within four (4) years of delivery), must be protected for four (4) 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 four (4) 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. SBIR data are protected from disclosure by the participating agency for a period of not less than 4 years from delivery of the last deliverable under the Phase I, II, or III. The protection period is extended with each subsequent related award in order to avoid harmful disclosure of SBIR data related to an on-going funded SBIR effort. It is the responsibility of DOE SBIR/STTR Phase III awardees to report to the DOE Office of Scientific and Technical Information (OSTI) any Phase III awards that they receive to extend the protection period on prior SBIR/STTR Phase I or II Final Technical Reports that were submitted to OSTI. 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.