

## **Phase III Awards: Statutory & Policy Provisions**

Office of SBIR/STTR Programs

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### Introduction

The SBIR and STTR Programs (collectively referred to as “Programs”) are codified at Section 9 of the Small Business Act, 15 U.S.C. 638. The U.S. Small Business Administration is responsible for developing and issuing SBIR and STTR Policy Directives, (available at [sbir.gov](http://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.

Phase I awards provide funding to conduct feasibility related experimental or theoretical research or research and development (R/R&D). Phase II awards provide funding to continue the R/R&D effort from the completed Phase I. Within the U.S. Department of Energy, Phase I and II of the Programs are administered by the Office of Science through the Office of SBIR/STTR Programs (ARPA-E administers its own Programs.)

Phase III is work that derives from, extends, or completes 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. A Federal agency, Government-owned, contractor-operated (GOCO) laboratories, or Federally-funded research and development centers (FFRDCs) may award a Phase III regardless of which Federal agency funded Phase I or II. SBIR/STTR funds may not be used for the Phase III effort.

Although the business must be a small business at time of the award (grant, cooperative agreement, or procurement contract) of a Phase I or II, there are no size limitations applicable to Phase III. There are no time limits between a Phase I/II and Phase III.

### Important Phase III Provisions

In addition to Federal funding, the Programs provide additional incentives and advantages to participants:

- Noncompetitive Phase III awards
- Phase III preference
- Phase III SBIR/STTR data rights
- Property Rights during Phase III
- Phase III cost share exemption (DOE specific)

### *Noncompetitive Phase III awards*

To the greatest extent practicable, a Phase III award does not require competition and the competition for either Phase I or Phase II awards should typically satisfy the competition requirement as explained in SBIR/STTR Policy Directive section 4(c)(3) and 15 U.S.C. 638(r)(4)(A).

The competitions for SBIR/STTR Phase I and Phase II awards satisfy any competition requirement of the Armed Services Procurement Act, the Federal Property and Administrative Services Act, and the Competition in Contracting Act. An agency that wishes to fund an SBIR/STTR Phase III award, which is an extension of prior Phase I and/or Phase II awards, is not required to conduct another competition for the Phase III award in order to satisfy those statutory provisions. As a result, in conducting actions relative to a Phase III SBIR/STTR award, it is sufficient to state for purposes of a Justification and Approval, if one is deemed required by the agency, that the project is an SBIR/STTR Phase III award that is derived from, extends, or completes efforts made under prior SBIR/STTR Funding Agreements and is authorized pursuant to 15 U.S.C. 638(r)(4). Further justification is not needed.

### *Phase III preference*

To the greatest extent practicable, Federal agencies, Government-owned, contractor-operated (GOCO) laboratories, and Federally-funded research and development centers (FFRDCs) shall issue, without further justification, Phase III awards relating to technology, including sole source awards, to the SBIR and STTR award recipients that developed the technology. See 15 U.S.C. 638(r)(4).

Please note that this preference applies when a Federal agency, Government-owned, contractor-operated (GOCO) laboratories, or Federally-funded research and development centers (FFRDCs) is seeking the specific technology that was developed under an SBIR/STTR Phase I or II award. Phase III preference does not require agencies, Government-owned, contractor-operated (GOCO) laboratories, or Federally-funded research and development centers (FFRDCs) to issue Phase III awards when issuing competitive solicitations that do not specify a technical solution previously developed under the Programs.

### *Phase III SBIR/STTR data rights*

If a SBIR/STTR Awardee receives a Funding Agreement (whether competed, direct award, sole sourced or a subcontract) for work that derives from, extends, or completes efforts made under prior SBIR/STTR Funding Agreements, then the work that derives from, extends, or completes efforts made under prior SBIR/STTR Funding Agreements is included in the Programs and the SBIR/STTR Phase III Awardee must receive all SBIR/STTR Phase III status, including SBIR/STTR Data Rights. The SBIR/STTR Data Rights should be provided to financial assistance recipients using the “SBIR/STTR Phase III” “Special Data Statute” using DOE’s latest Intellectual Property provisions available at <https://www.energy.gov/gc/standard-intellectual-property-ip-provisions-financial-assistance-awards>. SBIR/STTR Data Rights includes a twenty (20) year protection period, in which the Government is obligated to protect properly marked SBIR/STTR Data, including data generated from the SBIR/STTR Phase III work.

To protect generated data from release by the Government, SBIR/STTR Awardees should continue to mark deliverables and proposals with the notice in the terms of their award, a notice similar to the

following. The “Award Date” of the legend should be the date of the award in which the data was generated. For example, data developed during the SBIR/STTR Phase III work should be marked with the below legend having the “Award Date” as the date of the SBIR/STTR Phase III award.

### **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.

#### *Phase III Property Rights*

An SBIR/STTR Phase III Awardee is authorized the continued use of any property transferred by DOE to the Phase II Awardee or acquired by the Awardee for the purpose of fulfilling the Phase III award. A Phase II Awardee may use the property for a period of not less than 2 years, beginning on the initial date of the Awardee’s participation in the Phase III award.

#### *Phase III Cost Share Exemption (DOE Specific)*

As embodied in 2 CFR 910.130, cost sharing is required for research, development, demonstration and commercial application activities funded by the DOE. However, this provision specifically exempts awards made under the SBIR and STTR programs [see EAct of 2005, Section 988 Cost Sharing, (f) Exclusions].

*In addition to the requirements of 2 CFR 200.306 the following requirements apply to research, development, demonstration and commercial application activities:*

*(a) Cost sharing is required for most financial assistance awards for research, development, demonstration and commercial applications activities initiated after the enactment of the Energy Policy Act of 2005 on August 8, 2005. This requirement does not apply to:*

*(1) An award under the small business innovation research program (SBIR) or the small business technology transfer program (STTR).....*

Phase III awards are considered awards made under the SBIR and STTR programs by the authorizing statute for these programs [see 15 U.S.C. 638 (e)13]. Therefore, Phase III awards are exempt from the DOE cost-share requirement similar to Phase I and II awards.