

but is funded by sources other than the STTR Program. In addition, SBA proposes to clarify that a Phase III award is by its nature an STTR award and therefore the awardee must be accorded STTR data rights. In addition, SBA proposes to clarify that even if a competition is held, if the awardee was a Phase II STTR awardee and the contract is for work that derives from, extends, or logically concludes that concern's work, the contract has STTR Phase III status and must provide for STTR data rights.

SBA proposes amending section 4(c)(1)(i) of the Policy Directive to clarify the issue of the practical impact a Phase III designation would have in cases where no Federal funding is expended. SBA has proposed a revision that would explain that the guidance in this Policy Directive regarding STTR Phase III pertains to non-STTR federally-funded work described and does not address the nature of private agreements the STTR firm may make in the commercialization of its technology.

SBA has proposed clarification in the Policy Directive (at section 4(c)(2)), which provides that an agency official may determine, using the criteria set forth in the Policy Directive as guidance, whether a contract or agreement is a Phase III award. SBA understands that it is currently not clear whether such officials have this authority.

In section 4(c)(3), SBA proposes clarification of whether and when a Justification and Approval (J&A) should be issued during Phase III. SBA believes that a procuring agency may restrict competition under the STTR Program to small businesses or a small business (if that is all that can perform the award) and is not required by statute to prepare a J&A. Consequently, SBA proposes that a J&A is not required to fund an STTR Phase III project, but if an agency wishes to prepare one, "it is sufficient to state for purposes of a Justification and Approval pursuant to FAR 6.302-5, that the project is a STTR Phase III award that is derived from, extends, or logically concludes efforts performed under prior STTR funding agreements and is authorized under 10 U.S.C. 2304(b)(2) or 41 U.S.C. 253(b)(2)."

Further, in section 4(c)(6), SBA proposes clarification that the small business size limits for Phase I and Phase II awards do not apply to Phase III awards. SBA believes that the intent of Congress and purpose of the program is that STTR firms should be encouraged, in Phase III, to develop and expand business applications of their STTR research with the desired outcome that new employment and

income are generated. The purpose of Phase III is to commercialize the innovation and help the SBC grow. Restricting Phase III to only SBCs might hinder the growth of STTR participants.

Section 5 of the proposed Policy Directive provides guidance on the program solicitation process and section 6 sets forth the eligibility and application requirements. SBA did not propose substantive changes to these sections.

Section 7 of the proposed Policy Directive outlines the SBIR funding process. The Reauthorization Act requires SBA to amend the Policy Directive and provide that beginning with Fiscal year 2004, agencies may approve a shorter or longer duration of time for award performance, where appropriate for a particular project. SBA's Policy Directive has always provided flexibility to the participating agencies and therefore the proposed Policy Directive still provides for this policy at section 7(h).

In section 7(i), SBA proposes a clarification to identify \$100,000 in Phase I and \$500,000 in Phase II as award amounts that generally may not be exceeded. SBA proposes that agencies may exceed these dollar levels where appropriate for a particular project, but must provide justification to SBA for doing so. SBA believes that this is consistent with the statute and legislative history and that flexibility is necessary to achieve success in projects that most likely would not be successful otherwise, such as drug discovery.

In that same section, SBA also proposes addressing a change made by the Reauthorization Act, which provides that beginning October 1, 2003, a Phase II award may not generally exceed \$750,000.

Section 8 of the proposed Policy Directive sets forth the terms of agreement under STTR awards. The Reauthorization Act specifically requires SBA to clarify the rights in data that apply in Phases I, II, and III. Thus, in section 8(b), SBA proposes clarification that agencies are required by statute to protect STTR data rights developed from Phases I, II, and III awards, including subcontracts to such awards, for a period of at least 4 years from the last deliverable under that award. In addition, SBA proposes a provision that agencies can not condition a Phase III award on a concern giving up its STTR data rights. Likewise, the proposed Policy Directive clarifies that STTR data rights can not be negotiated or diminished by the funding agency. Further, the proposed Policy Directive prohibits the negotiation for STTR data rights before

awarding an STTR funding agreement. SBA proposes that negotiations with the STTR awardee regarding intellectual property rights must be via a separate agreement, made without pressure or coercion by the agency or any other party.

SBA added clarifying sentences to section 8(b)(2) of the Policy Directive that state: "For example, if a Phase III award is issued within or after the Phase II data rights protection period and the Phase III award refers to and protects data developed and protected under the Phase II award, then that data must continue to be protected through the Phase III protection period. Agencies have discretion to adopt a protection period longer than 4 years. The government retains a royalty-free license for government use of any technical data delivered under an STTR award, whether patented or not. This section does not apply to program evaluation."

SBA also proposes clarifying that any data developed under a Phase III funding agreement must be protected by STTR data rights. Any data developed under Phase I, II, or III continues to be protected for a period of at least 4 years from delivery of the last deliverable under that award. The Policy Directive clarifies that although agencies are released from obligation to protect STTR data upon expiration of the protection period, any such data that is also protected and referenced under a subsequent STTR award agreement must remain protected through the protection period of that subsequent STTR award agreement. For example, if a Phase III award that is issued within the Phase II data rights protection period refers to and protects the data developed and protected under the Phase II award, then that data must continue to be protected through the Phase III protection period.

Section 9 of the proposed Policy Directive outlines the responsibilities of SBIR Participating Agencies and Departments. In section 9(a)(5), SBA proposes that agencies must collect and maintain information from awardees and provide it to SBA so that SBA may develop and maintain the Technology Resources Network (Tech-Net) Database, which is described in detail in section 11(e) of this proposed Policy Directive. The Tech-Net Database is a requirement of the Reauthorization Act.

In section 9(a)(11), SBA also proposes that agencies must report those instances where a follow-on award with non-STTR funds was issued to a concern other than the STTR awardee that developed the technology to be pursued under the follow-on award. The statute and legislative history evidence