

(1) STTR awardees may be paid under an applicable, authorized progress payment procedure or in accordance with a negotiated/definitized price and payment schedule. Advance payments are optional and may be made under appropriate law. In all cases, agencies must make payment to recipients under STTR funding agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of the funding agreement requirements.

(2) All STTR funding agreements must use, as appropriate, current cost principles and procedures authorized for use by the STTR agencies. At the time of award, agencies shall inform each STTR awardee, to the extent possible, of the applicable Federal regulations and procedures that refer to the costs that, generally, are allowable under funding agreements.

(g) *Funding Agreement Types and Fee or Profit.* Statutory requirements for uniformity and standardization require consistency in application of STTR Program provisions among STTR agencies. However, consistency must allow for flexibility by the various agencies in missions and needs as well as the wide variance in funds required to be devoted to STTR Programs in the agencies. The following instructions meet all of these requirements:

(1) *Funding Agreement.* The type of funding agreement (contract, grant, or cooperative agreement) is determined by the awarding agency, but must be consistent with 31 U.S.C. 6301–6308.

(2) *Fee or Profit.* Except as expressly excluded or limited by statute, awarding agencies must provide for a reasonable fee or profit on STTR funding agreements, consistent with normal profit margins provided to profit-making firms for R/R&D work.

(h) *Periods of Performance and Extensions.*

(1) In keeping with the legislative intent to make the largest possible number of STTR awards, modification of funding agreements to extend periods of performance, to increase the scope of work, or to increase the dollar amount should be kept to a minimum, except for options in original Phase I or II awards.

(2) *Phase I.* Period of performance normally should not exceed 1 year. However, agencies may provide a longer performance period where appropriate for a particular project. Beginning with FY 2004, agencies may approve a shorter or longer period of time, when appropriate for a particular project.

(3) *Phase II.* Period of performance under Phase II is a subject of negotiation between the awardee and the issuing agency. The duration of Phase II

normally should not exceed 2 years. However, agencies may provide a longer performance period where appropriate for a particular project. Beginning with FY 2004, agencies may approve a shorter or longer period of time, when appropriate for a particular project.

(i) *Dollar Value of Awards.*

(1) Generally, a Phase I award may not exceed \$100,000 and a Phase II award may not exceed \$500,000. Beginning October 1, 2003, a Phase II award may not generally exceed \$750,000. SBA may adjust these amounts once every 5 years to reflect economic adjustments and programmatic considerations. There is no dollar level associated with Phase III STTR awards.

(2) An awarding agency may exceed those award values where appropriate for a particular project. After award of any funding agreement exceeding \$100,000 for Phase I or \$500,000 for Phase II (\$750,000 beginning October 1, 2003), the agency's STTR representative must provide SBA with written justification of such action. This justification must be submitted with the agency's Annual Report data. Similar justification is required for any modification of a funding agreement that would bring the cumulative dollar amount to a total in excess of the amounts set forth above.

## 8. Terms of Agreement Under STTR Awards

(a) *Proprietary Information Contained in Proposals.* The standardized STTR Program solicitation will include provisions requiring the confidential treatment of any proprietary information to the extent permitted by law. Agencies will discourage SBCs from submitting information considered proprietary unless the information is deemed essential for proper evaluation of the proposal. The solicitation will require that all proprietary information be identified clearly and marked with a prescribed legend. Agencies may elect to require SBCs to limit proprietary information to that essential to the proposal and to have such information submitted on a separate page or pages keyed to the text. The government, except for proposal review purposes, protects all proprietary information, regardless of type, submitted in a contract proposal or grant application for a funding agreement under the STTR Program, from disclosure.

(b) *Rights in Data Developed Under STTR Funding Agreement.* The Act provides for "retention by an SBC of the rights to data generated by the concern in the performance of an STTR award."

(1) Each agency must refrain from disclosing STTR technical data to

outside the government (except reviewers) and especially to competitors of the SBC, or from using the information to produce future technical procurement specifications that could harm the SBC that discovered and developed the innovation.

(2) STTR agencies must protect from disclosure and non-governmental use all STTR technical data developed from work performed under an STTR funding agreement for a period of not less than 4 years from delivery of the last deliverable under that agreement (either Phase I, Phase II, or Federally-funded STTR Phase III) unless, subject to (b)(3) of this section, the agency obtains permission to disclose such STTR technical data from the awardee or STTR applicant. Agencies are released from obligation to protect STTR data upon expiration of the protection period except that any such data that is also protected and referenced under a subsequent STTR award must remain protected through the protection period of that subsequent STTR award. 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 four 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.

(3) STTR technical data rights apply to all STTR awards, including subcontracts to such awards, that fall within the statutory definition of Phase I, II, or III of the STTR Program, as described in Section 4 of this Policy Directive. The scope and extent of the STTR technical data rights applicable to Federally-funded Phase III awards is identical to the STTR data rights applicable to Phases I and II STTR awards. The data rights protection period lapses only: (i) upon expiration of the protection period applicable to the STTR award, or (ii) by agreement between the awardee and the agency.

(4) Agencies must insert the provisions of (b)(1), (2), and (3) immediately above as STTR data rights clauses into all STTR Phase I, Phase II, and Phase III awards. These data rights clauses are non-negotiable and must not be the subject of negotiations pertaining to an STTR Phase III award, or diminished or removed during award administration. An agency must not, in any way, make issuance of an STTR