

Phase III award conditional on data rights. If the STTR awardee wishes to transfer its STTR data rights to the awarding agency or to a third party, it must do so in writing under a separate agreement. A decision by the awardee to relinquish, transfer, or modify in any way its STTR data rights must be made without pressure or coercion by the agency or any other party. Following issuance of an STTR Phase III award, the awardee may enter into an agreement with the awarding agency to transfer or modify the data rights contained in that STTR Phase III award. Such a bilateral data rights agreement must be entered into only after the STTR Phase III award, which includes the appropriate STTR data rights clause, has been signed. SBA must immediately report to the Congress any attempt or action by an agency to condition an STTR award on data rights, to exclude the appropriate data rights clause from the award, or to diminish such rights.

(c) *Allocation of Rights.*

(1) An SBC, before receiving an STTR award, must negotiate a written agreement between the SBC and the single, partnering research institution, allocating intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization. The SBC must submit this agreement to the awarding agency upon request—either with the proposal or any time thereafter. The SBC must certify in all proposals that the agreement is satisfactory to the SBC.

(2) The awarding agency may accept an existing agreement between the two parties if the SBC certifies its satisfaction with the agreement, and such agreement does not conflict with the interests of the Government. Each agency participating in the STTR Program shall provide a model agreement to be used as guidance by the SBC in the development of an agreement with the research institution. The model agreement should direct the parties to, at a minimum:

(i) State specifically the degree of responsibility, and ownership of any product, process, or other invention or innovation resulting from the cooperative research. The degree of responsibility shall include responsibility for expenses and liability, and the degree of ownership shall also include the specific rights to revenues and profits.

(ii) State which party may obtain United States or foreign patents or otherwise protect any inventions resulting from the cooperative research.

(iii) State which party has the right to any continuation of research, including non-STTR follow-on awards.

The Government will not normally be a party to any agreement between the SBC and the research institution. Nothing in the agreement is to conflict with any provisions setting forth the respective rights of the United States and the SBC with respect to intellectual property rights and with respect to any right to carry out follow-on research.

(3) Pursuant to the Act, SBA will establish a single model agreement for use in the STTR Program that allocates between SBCs and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization. Written comments from affected Federal agencies, SBCs, research institutions, and other interested parties will be solicited in the development of the model agreement. Each agency participating in the STTR Program will adopt the agreement developed by SBA as the agency's model agreement.

(d) *Title Transfer of Agency Provided Property.* Under the Act, the Government may transfer title to equipment provided by the STTR agency to the awardee where such transfer would be more cost effective than recovery of the property.

(e) *Continued Use of Government Equipment.* The Act directs that an agency allow an STTR awardee participating in the third phase of the STTR Program continued use, as a directed bailment, of any property transferred by the agency to the Phase II awardee. The Phase II awardee may use the property for a period of not less than 2 years, beginning on the initial date of the concern's participation in the third phase of the STTR Program.

(f) *Grant Authority.* The Act does not, in and of itself, convey grant authority. Each agency must secure grant authority in accordance with its normal procedures.

(g) *Conflicts of Interest.* SBA cautions STTR agencies that awards made to SBCs owned by or employing current or previous Federal government employees may create conflicts of interest in violation of FAR part 3 and the Ethics in Government Act of 1978, as amended. Each STTR agency should refer to the standards of conduct review procedures currently in effect for its agency to ensure that such conflicts of interest do not arise.

(h) *American-made Equipment and Products.* Congress intends that the awardee of a funding agreement under the STTR Program should, when purchasing any equipment or a product with funds provided through the funding agreement, purchase only American-made equipment and products, to the extent possible, in

keeping with the overall purposes of this program. Each STTR agency must provide to each awardee a notice of this requirement.

9. Responsibilities of STTR Participating Agencies and Departments

(a) The Act requires each agency participating in the STTR Program to:

(1) Unilaterally determine the categories of projects to be included in its STTR Program, giving special consideration to broad research topics and to topics that further one or more critical technologies, as identified by:

(i) The National Critical Technologies panel (or its successor) in reports required under 42 U.S.C. 6683, or
(ii) The Secretary of Defense in accordance with 10 U.S.C. 2522.

(2) Release STTR solicitations in accordance with the SBA master schedule.

(3) Unilaterally receive and evaluate proposals resulting from program solicitations, select awardees, issue funding agreements, and inform each awardee under such agreement, to the extent possible, of the expenses of the awardee that will be allowable under the funding agreement.

(4) Require a succinct commercialization plan with each proposal submitted for a Phase II award.

(5) Collect and maintain information from awardees and provide it to SBA to develop and maintain the Tech-Net Database, as identified in section 11(e) of this Policy Directive.

(6) Administer its own STTR funding agreements or delegate such administration to another agency.

(7) Include provisions in each STTR funding agreement setting forth the respective rights of the United States and the awardee with respect to intellectual property rights and with respect to any right to carry out follow-on research.

(8) Ensure that the rights in data developed under each Federally-funded STTR Phase I, Phase II, and Phase III award are protected properly.

(9) Make payments to awardees of STTR funding agreements on the basis of progress toward or completion of the funding agreement requirements and in all cases make payment to awardees under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of such requirements.

(10) Provide an annual report on the STTR Program to SBA. See section 10 of this Policy Directive.

(11) Report at least annually to SBA's Office of Technology all instances in which an agency pursued research,