



Compliance with Small Business Innovation Research (SBIR) Program Requirements

Applicant Fraud Awareness Training



NIST National Institute of
Standards and Technology
U.S. Department of Commerce

You **must** successfully complete this training and **attach the signed completion certificate** to your proposal.



Overview



- Overview of the SBIR Program
(if familiar, skip to slide 11)
- The Department of Commerce (DOC)
Office of Inspector General (OIG)
- Fraud in the SBIR Program
- Additional Items
- Certificate



Overview of the SBIR Program

Introduction: SBIR



- **Federal program to foster and encourage participation by small business concerns in research and development**
- **Three-phased process encompassing (1) technology feasibility, (2) demonstration and evaluation of commercial potential, and (3) transition to the marketplace**

SBIR Program Goals



- **Stimulate technological innovation**
- **Meet Federal research and development needs**
- **Increase private sector commercialization of innovations derived from federal R&D**
- **Foster and encourage participation by socially and economically disadvantaged and women-owned small businesses**

SBIR Program Eligibility



SBIR participation requirements:

- **For-profit Small Business Concern (SBC) of 500 or fewer employees**
- **SBC > 50% owned by U.S. citizens or permanent resident aliens of the U.S.**
- **“Principal Investigator”—individual designated by the SBC to provide scientific and technical direction to the project**
 - **Primary employment (> 50%) must be with the SBC**
 - **Precludes full-time employment by another organization**
- **Work must be performed in the U.S.***
- **SBC cannot receive funding for a SBIR project essentially equivalent to other work they have performed or are performing for the federal government**

* Includes Puerto Rico and other U.S. Territories

SBIR Program Eligibility



SBIR participation requirements:

- **During Phase I, a minimum of 2/3 of the effort must be performed by SBC**
- **During Phase II, a minimum of 1/2 of the effort must be performed by SBC**

SBIR Three-Phase Process



Phase I

- **The purpose of Phase I is to determine the scientific, technical, and commercial merit and feasibility of ideas proposed by SBCs pursuant to the solicitation**
- **Phase I awards are normally up to \$150K, but agencies may issue awards of up to \$225K**
- **Normally should not exceed 6 months in duration for SBIR awards**

SBIR Three-Phase Process



Phase II

- **Continuation of the R&D effort, funding the most promising Phase I projects**
- **Expect that Phase II awardees will be able to produce a well-defined, deliverable prototype (where applicable)**
- **Only those firms that were awarded Phase I contracts are eligible to submit a Phase II proposal**
- **Phase II awards are generally up to \$1M, but agencies may issue awards of up to \$1.5M**
- **Normally should not exceed 2 years in duration**

SBIR Three-Phase Process



Phase III

- **Commercializing work that derives from, extends, or completes an effort performed under prior SBIR agreements**
- **Phase III is the ultimate goal of each SBIR effort**
- **Phase III contracts may be awarded on a sole-source basis**
- **No limit on the number, award amount, or duration of Phase III contracts**
- **Small business size standards do not apply to Phase III contracts**



The DOC OIG

The DOC OIG



- Created by IG Act of 1978 to:
 - Combat fraud, waste, and abuse within the DOC
 - Conduct audits and investigations
 - Keep the DOC and Congress informed
- Mission
 - To improve the programs and operations of the Department of Commerce through independent and objective oversight

This includes oversight of the SBIR Program

What the DOC OIG Does



- **Audits**

- Acquisition and Special Program Audits
- Economic and Statistical Program Assessment
- Financial and Intellectual Property Audits
- System Acquisition and Information Technology Security
- Audit Quality and Broadband

- **Investigations**

- Office of Special Investigations
 - Investigative Attorneys – Conduct Administrative Investigations
 - General Investigators – Conduct Administrative Investigations
- Office of Criminal Investigations
 - Special Agents—Conduct Criminal Investigations
- Office of Compliance and Ethics
 - Oversees Hotline Complaints

Whistleblower Protections



- Federal employees, applicants, and employees of federal contractors and grantees who make certain disclosures—to OIG or elsewhere—are protected under the law from suffering retaliation because of those disclosures.
- Basic elements of whistleblower protection law: (1) you make a protected disclosure; (2) you are subject to certain retaliatory acts; and (3) there is a causal connection between your protected disclosure and the retaliatory act.
- OIG receives, reviews, and where appropriate, investigates allegations of whistleblower reprisal.
- Whistleblower Protection Ombudsperson Contact Information:

Email: wpo@oig.doc.gov

Phone: 202-482-1099

Hotline: <http://www.oig.doc.gov/>



Fraud in the SBIR Program

Fraud in the SBIR Program: Overview



- **Fraud Defined**
- **Compliance Requirements**
 - **Essentially Equivalent Work Prohibited**
 - **Primary Employment of Principal Investigator**
 - **Compliance Certifications**
- **Consequences of Fraud**
- **Recommendations/Best Practices**



Fraud in the SBIR Program: Fraud Defined

Fraud defined



Although it can take many forms, fraud, at its core, is **deception** through the **misrepresentation** or **omission** of **material facts** for the purpose of **illegitimate gain**

Fraud Examples



Examples of fraud on SBIR contracts include, but are not limited to:

- **Accepting federal funding on more than one SBIR contract/grant for essentially equivalent work**
- **Misrepresentations regarding the primary employer of the PI**
- **Misrepresentations or omissions about the SBC's facilities, number of employees, or percentage of work to be performed by the SBC**
- **Providing falsified letters of reference**
- **Misrepresentations concerning the use of funds expended, work performed, results achieved, or compliance with program requirements under a SBIR award**

Fraud Examples (continued)



- **Misuse or conversion of SBIR award funds (e.g. using funds for personal expenses)**
- **Fabrication, falsification, or plagiarism in applying for, carrying out, or reporting results from a SBIR award**
- **Failure to comply with applicable federal cost principles governing SBIR awards**
- **Undisclosed self-dealing, such as a sub-award to an entity in which the PI or one of the PI's family members has a financial interest**



Fraud in the SBIR Program: Compliance Requirements

Compliance Requirements



Essentially Equivalent Work is Prohibited

IMPORTANT— It is unlawful to enter into multiple contracts or grants requiring essentially equivalent work. SBIR awardees must certify at the time of proposal submission and during the lifecycle of the award that they do not have any essentially equivalent work funded by the federal government.

Compliance Requirements



“Essentially Equivalent Work” defined:

- **Work that is substantially the same research, which is proposed for funding in more than one contract proposal or grant application submitted to the same federal agency or submitted to two or more different federal agencies for review and funding consideration; or**
- **Work where a specific research objective and the research design for accomplishing the objective are the same or closely related to another proposal or award, regardless of the funding source**

Compliance Requirements



Similar Proposals or Awards

- **Submitting similar or even identical proposals for consideration by multiple federal agencies is permissible; however:**
 - **It is unlawful to enter into multiple funding agreements for essentially equivalent work**
 - **Submission of proposals involving essentially equivalent work must be fully disclosed to the soliciting agency or agencies before award**

Bottom Line: Absent specific authorization, it is fraud to accept payment from multiple agencies for the same or essentially equivalent work

Compliance Requirements



Disclosure of Similar Proposals or Awards

If an applicant elects to submit multiple proposals describing duplicate or essentially equivalent work, a statement must be included in each such proposal indicating:

- **Name and address of each agency to which proposals were submitted or from which awards were received**
- **Date of proposal submission or date of award**
- **Title, number, and date of solicitations under which each proposal was submitted or awards received**
- **Specific applicable research topics for each proposal submitted or award received**
- **Titles of research projects; and**
- **Name and title of principal investigator or project manager for each proposal submitted or award received**

Essentially Equivalent Work Case Example



Double-click below
for more
information

Allegations Included:

- SBC owner applied for funding from NASA for a proposal for which he had already received funding from the Air Force
- Owner subcontracted out major portions of the grants and contracts, violating their terms

Outcome:

- SBC owner pled guilty to mail fraud and tax evasion
- False Claims Act settlement
- Sentenced to twelve months of home confinement and five years of probation
- Paid \$1.4 million in restitution to the government
- Five-year ban on receiving federal grants or contracts

NEWS

United States Department of Justice
U.S. Attorney, District of New Jersey
970 Broad Street, Seventh Floor
Newark, New Jersey 07102



Christopher J. Christie, U.S. Attorney

More Information? Dial the Public Affairs UpDate Line (973-645-3657), or call the Assistant U.S. Attorney or other contact listed below to see if more information is available.

News on the Internet: News Releases, related documents and advisories are posted short term at our website, along with links to our archived releases at the Department of Justice in Washington, D.C. Go to: <http://www.njusao.org/break.html>

Assistant U.S. Attorneys
DONNA GALLUCIO
and STUART A. MINKOWITZ
973-645-2786 and 3925

Inv1109.nrl
FOR IMMEDIATE RELEASE
Nov. 9, 2005

New Jersey-based Scientist Sentenced for Government Contract
and Tax Fraud; Also Settles Civil Complaint and Tax Liability for
\$1.4 Million

(More)

Public Affairs Office
<http://www.njusao.org>
Michael Drewniak, PAO

UpDates — 973-645-3657
973-645-2888

Breaking News (NA) <http://www.njusao.org/break.html>

Compliance Requirements



The Primary Employer of the Principal Investigator (PI)

- **The PI's primary employer must be the SBC**
- **SBC cannot change the PI without the prior written consent of the government**

Employment of PI Case Example



Click below for more information:



Adobe Acrobat
Document

Allegations:

- **NASA SBIR contract was available only to those who worked on the project full-time**
- **Subject ineligible to receive the contract due to having a full-time job outside the firm he operated (employed full-time at a university)**

Outcome:

- **Subject pled guilty to one count of wire fraud**
- **Sentenced to three years of probation**
- **Ordered to pay \$133,333 in restitution to the government**

Certifications



You Must Certify When You Submit Your Proposal:

- **The awardee is an SBC meeting the size eligibility provisions**
- **The SBC is > 50% owned by U.S. citizens or permanent resident aliens of the U.S.**
- **At least 2/3 of the work will take place in the SBC's facilities with the SBC's employees (Phase I)**
- **PI is primarily employed by the SBC**
- **Physical address of the SBC is located in the U.S. (includes Puerto Rico and other U.S. territories)**
- **The SBC has not been awarded any other federal government contracts/grants for essentially equivalent work**
- **Disclosure of family or academic relationships with company owners or employees, subcontractors, etc.**

Certifications (Continued)



Phase I And II Certifications – Award and Life Cycle Submissions

All SBIR Phase I and II awardees must submit certifications at the following times:

- **Phase I and Phase II awardees—at time of award**
- **Phase I awardees—prior to receipt of final payment**
- **Phase II awardees—prior to receipt of more than half the total contract/grant award amount AND before receipt of final payment**

Certifications (Continued)



Phase I And II Certifications – Award and Life Cycle Submissions

Certifications include:

- PI's primary employment is with the SBC
- Essentially equivalent work has not been funded by another federal agency
- **PHASE II MID-EFFORT CERTIFICATION**—Upon completion of the effort, the SBC will have performed the required portion of the work
- **PHASE I AND II FINAL CERTIFICATION**—Work is completed and the SBC has performed the required portion of the work
- The awarded R&D is being/has been performed in the U.S.
- Performance is taking/has taken place at the SBC's facilities with the SBC's employees
- The SBC understands information submitted may be provided to federal, state, and/or local agencies to be used for determining violations of law and other purposes

Falsely certifying to any material fact or representation contained in a certification is fraud

False Certifications Case Example



**Double-click
below for more
information**

Subject was the Director of the Innovation Nuclear Space Power and Propulsion Institute at a university, and Subject's wife was president of an SBC



Adobe Acrobat
Document

Allegations:

- **Falsely represented the SBC would provide research services of scientists, engineers and laboratory assistants working in a state-of-the-art analysis and data communication laboratory**
- **Submitted false claim forms and invoices that misrepresented the identities of persons who performed actual work**
- **Falsely represented that PI described in the proposal was primarily employed by SBC**
- **Used work product of university research assistant and adjunct professor without their knowledge or consent**

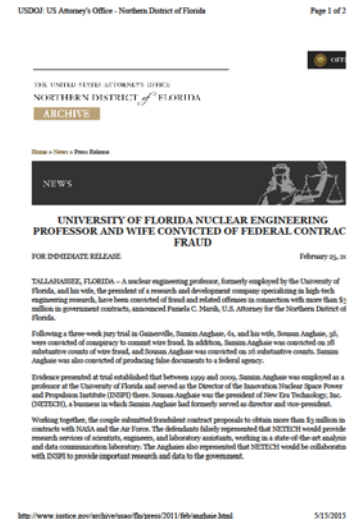
False Certifications Case Example (Continued)



Double-click
below for more
information

Outcome:

- Subject and wife convicted of conspiracy to commit wire fraud and more than two dozen counts of wire fraud
- Subject was sentenced to 6 months in prison, 3 years supervised release, \$390,252 forfeiture and \$100,000 fine
- Wife was sentenced to 6 months of home confinement with similar financial penalties





Fraud in the SBIR Program: Consequences of Fraud

Consequences of Committing Fraud



Criminal Prosecution

Lying to obtain a SBIR contract/grant, or lying about the work performed may **violate several criminal laws:**

- False Statements, 18 U.S.C. § 1001 (up to 5 years in prison, forfeiture and \$250K fine)
- Theft of Federal Property, 18 U.S.C. § 641 (up to 10 years in prison, forfeiture and \$250K fine)
- Wire Fraud, 18 U.S.C. § 1343 (up to 20 years in prison, forfeiture and \$250K fine)

Criminal forfeiture = full amount of contract/grant; personal assets can be seized to satisfy forfeiture or fine

Consequences of Committing Fraud (continued)



Civil Liability

- **May be imposed in addition to or in lieu of criminal prosecution**

Civil False Claims Act, 31 U.S.C. § § 3729-3733

- **Liability includes up to treble damages (3x actual damages) and a civil penalty of up to \$21,916 for each false claim**
- **False claims liability includes payments received when the government relied upon false information in the SBIR proposal, in a certification of current cost or pricing data, in a request for payment, or in progress reports**
- **Although the statute requires knowledge that the claim was false, the term “knowledge” includes “deliberate ignorance” or “reckless disregard of the truth”**
- **Whistleblowers can receive up to 30% of the recovery amount for reporting fraud via *qui tam* provision of False Claims Act**

Consequences of Committing Fraud (continued)



Administrative Remedies

- **Government can terminate contracts/grants tainted by fraud**
- **Government can suspend/debar SBC, owner, and/or employees**
 - **Results in prohibition from receiving any federal contracts/grants or working as a subcontractor/subgrantee on federal contracts**
 - **Debarment is typically for three years, but can be for a longer period**
- **Administrative remedies are in addition to or in lieu of criminal and civil liability**



Fraud in the SBIR Program: Recommendations

Remember



The government retains the right to examine the status of a SBIR contract/grant at any time

Status checks include:

- Site visits
- Requests for records including financial documents and timesheets

Good recordkeeping will help ensure successful status checks and eliminate potential issues

Recommendations



Good Records: Key to Protecting Yourself

Documentation

- **Timesheets for hours worked by ALL involved employees**
- **All financial receipts, invoices and statements for expenses related to the project**
- **Laboratory notebooks**

Research Institutions (if applicable)

- **Agreements for use of research facilities**
- **Personnel logs for assistance from institution's staff and/or students**

Updates on the project's status, including successes/failures

- **Keep regular records at the business-level so you have all facts on hand if needed/requested by the government**



Additional Items

Important to Remember!



If you are unsure about any of the requirements relating to the award of a SBIR contract/grant:

- **Contact the appropriate Contracting/Grant Officer and provide all relevant facts**
- **Request written guidance from the Contracting/Grant Officer, and**
- **Follow it!**

International Traffic in Arms Regulation (ITAR)

22 C.F.R. § § 120.1-130.17



What is the intent of ITAR?

- **Restricts exports of goods and technology that could contribute to the military potential of adversaries**
- **Prevent proliferation of weapons of mass destruction**
- **Prevent terrorism**
- **Comply with U.S. trade agreements and trade sanctions against other nations**

ITAR restrictions may apply to SBIR awardees

- **Ensure you and your subcontractors/subgrantees/research institutions have policies/processes in place to protect ITAR information**
- **Disclosure of defense-related technical data to unauthorized person (*e.g.*, foreign student) may violate ITAR**

References

- **U.S. Department of State, Directorate of Defense Trade Controls**
https://www.pmddtc.state.gov/regulations_laws/itar.html

Additional Resources



U.S. Government SBIR/STTR website

- <http://www.sbir.gov/>

Small Business Administration website

- <http://www.sba.gov/>

NOAA SBIR website

- <http://techpartnerships.noaa.gov/SBIR.aspx>

NIST SBIR website

- <https://www.nist.gov/tpo/small-business-innovation-research-program>

SBIR Policy Directive

- https://www.sbir.gov/sites/default/files/sbir_pd_with_1-8-14_amendments_2-24-14.pdf



Certificate



You must successfully complete this training and attach the completion certificate to your proposal.

Certificate of Training Completion



The undersigned has fully and completely reviewed this training on behalf of the proposer/awardee, understands the information presented in this training, and has the authority to make this certification on behalf of the proposer/awardee. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of a SBIR contract or grant may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. 3729 *et seq.*; double damages and civil penalties under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 C.F.R. Part 180; and other administrative remedies including termination of active SBIR awards.

Signature

Date

Name

Firm Name

Position Title