FRAUD, WASTE & ABUSE
Prevention in the Department of Defense (DOD)

SBIR & STTR Programs

-- July 2018 --
What is SBIR?
The Small Business Innovation Research Program is a federal program to foster and encourage participation by small business concerns in research and development. It is designed to:

- Stimulate technological innovation
- Increase small business participation in federal R&D
- Increase private sector commercialization of innovations derived from federal R&D
- Foster and encourage participation by socially and economically disadvantaged and women-owned businesses

The three-phased process of SBIR encompasses

1. Technology feasibility
2. Demonstration and evaluation of commercial potential
3. Transition to the marketplace

**Participation Requirements**

- For-profit Small Business Concern (SBC) of 500 or fewer employees
- SBC at least 51% owned by U.S. citizen(s)
- “Principal Investigator (PI)” – individual designated by the SBC to provide scientific and technical direction to the project
- Primary employment of PI (>50%) must be with the SBC
- Precludes PI full time employment by another organization
- Work must be performed in the US, including Puerto Rico and Territories
- SBC cannot receive funding for a SBIR project essentially equivalent to other work they have performed for the Federal Government
  - During Phase I, a minimum of 2/3 effort must be performed by the SBC
  - During Phase II, a minimum of 1/2 of the effort must be performed by the SBC
What is STTR?

The Small Business Technology Transfer Program facilitates and funds cooperative R&D between small businesses and research institutions. It is designed to:

- Create vehicles for moving ideas from research institutions to market
- Enable researchers to pursue commercial application of technologies
- Bridge funding gap between basic research and a commercial product

STTR has a three-phased process similar to SBIR.
Why is preventing Fraud, Waste, and Abuse in the SBIR/STTR Program important?

Annually, the DOD SBIR/STTR budget represents more than $1 billion in research funds. The funds that allow small businesses to conduct R&D strengthens the DOD and the private sector of the United States. Every dollar that is wasted or defrauded from the program has a direct impact on the future capabilities of the DOD and the United States. Ensuring that all SBIR/STTR Program funds are spent responsibly and contribute towards meeting the program’s stated goals are the responsibility of the small business acquisition workforce, SBIR/STTR workforce, and senior personnel, as well as the small business concerns that receive SBIR/STTR funds.

Understanding the indicators and types of fraud, waste, and abuse that can occur is critical for the SBIR/STTR awardees’ role in preventing the loss of research dollars.
DOD SBIR/STTR Training

FRAUD

July 2018
What is Fraud?

Fraud is the wrongful and criminal deception designed to unlawfully deprive the United States of something of value or to secure from the United States for an individual a benefit, privilege, allowance, or consideration to which he or she is not entitled.

Who's responsible for fraud?

Individuals attempting to defraud the DOD can include contractors, subcontractors, civilian employees, and individual service members.
What are the factors that cause fraud?

**OPPORTUNITY**
The ability to commit fraud. This also means that internal controls used to prevent fraud are either weak or nonexistent.

**RATIONALIZATION**
The ability to persuade yourself that something that is otherwise wrong is okay to do or act on.

**MOTIVATION**
The pressure or need felt by the individual to commit fraud.
There are 4 main types of fraud. What are they?
Type 1

**Misrepresentations or factual omissions**

Misrepresentations or factual omissions to obtain, or otherwise receive funding under an SBIR/STTR award.

**Examples**

Submitting **false certifications**, including representations that the company would not duplicate its research from another SBIR/STTR award.

Submitting **certifications that misrepresent a company’s eligibility**, including certifying that the company can do in-house research when it doesn't have the capability, and claiming that a company is American-owned or a small business when it is not.

Providing **inaccurate and inflated labor rates** in its proposed labor costs for a SBIR/STTR contract award.

Providing **falsified letters** of reference.

Identifying a **principal investigator** that is not primarily employed by the small business or RI.
Who is the **Primary Employer of the Principal Investigator (PI)**

For **SBIR** contracts the PI's **primary employer** must be the **small business concern** submitting a proposal.

For **STTR** contracts the PI's **primary employer** must be the **small business concern** submitting the proposal or subcontracting **research institute**.

The small business cannot change the PI without the **prior written consent** of the Government.

- Not reporting the principal investigator's place of employment accurately is fraud
- Failing to report this information properly is a federal offense
Required Certification upon Award

- The awardee is an SBC meeting the size eligibility provisions
- SBC is at least 51% owned by U.S. citizens or permanent resident aliens of the U.S.
- Physical address of SBC is located in the U.S.
  (Includes Puerto Rico and Territories)
- The SBC has not been awarded any other Federal Government contracts or grants for essentially equivalent work
- For SBIR contracts, at least 2/3 of the work will take place in the SBC’s facilities with the SBC’s employees. For STTR contracts, at least 40% of the work will take place in the SBC’s facilities with the SBC’s employees*
- For SBIR contracts, PI is primarily employed by the SBC. For STTR PI is primarily employed by SBC or Research Institute

*In certain circumstances, firms may obtain waivers to these requirements.

Phase I and II Certifications - Award and Life Cycle Submissions

- PI’s primary employment
- 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 & 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 for other purposes

Falsely certifying to any material fact or representation contained in a certification is fraud
Misrepresentations of expended funds

Misrepresentations of the use of funds expended, work done, results achieved, or compliance with program requirements under an SBIR/STTR award.

Examples

Receiving funds, but not using the money to perform the agreed upon work.

Charging labor and materials used to complete commercial work to government-funded SBIR/STTR contracts.

Invoicing the government for the same equipment and materials under different SBIR/STTR contracts.

Recycling research by submitting research that was performed under a previous contract.

Subcontracting work out to another company without the government’s knowledge.

Fabricating, falsifying, or plagiarizing in carrying out or reporting result data, especially when reporting Phase I results to obtain a Phase II award.
**Type 3**

**Misuse of SBIR award funds**

Misuse or conversion of SBIR/STTR award funds, including any use of award funds while not in full compliance with SBIR/STTR Program requirements, or failure to pay taxes due on misused or converted SBIR/STTR award funds.

**Examples**

- Funneling SBIR/STTR funds into *personal bank accounts* and *falsifying time sheets* to conceal the improper use of funds.

- Using SBIR/STTR funds to pay for cars, property, home renovations, or other purchases that *enrich individuals*, rather than completing research.

- Overpaying vendors in order to *pocket the reimbursements*.

- Owners of companies *overpaying themselves*.

- Paying *kickbacks to government officials* in order to secure SBIR/STTR contracts.
**Type 4**

**Duplication of Funds**

Duplicate awards from the same or different agencies for the same work.

**Examples**

Submitting *duplicate proposals to different agencies* and receiving multiple awards for essentially the same or overlapping work.

Offer proposals that are supposed to do *separate work*, then provide *identical deliverables*.

Receiving *multiple payments for the same work* product from different agencies.

Steering new SBIR/STTR research topics towards topics *previously funded by other SBIR/STTR agencies* to facilitate research recycling.
What is **Duplication of Funds**?

It is unlawful to enter into multiple contracts or grants requiring essentially equivalent work. SBIR/STTR firms must certify at the time of award and the lifecycle of the award that they do not have any essentially equivalent work funded by the Federal Government.

Submitting similar or even identical proposals for consideration by multiple federal agencies is permissible; however, **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.

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**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
**Additional types**

**Self-dealing**, such as a sub-award to an entity in which the primary investigator or one of the primary investigator's family members has a financial interest.

**Failure to comply** with applicable federal cost principles governing an award.
What are the consequences of committing Fraud?

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<th>Criminal Prosecution</th>
<th>Civil Liability</th>
<th>Administrative Remedies</th>
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<td>Lying to obtain an SBIR/STTR contract, or lying about the work performed violates several criminal laws and will result in prosecution for the following crimes:</td>
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<td>• False Statements, 18 U.S.C. § 1001 (5 years in prison, forfeiture, and $250,000 fine)</td>
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<td>• Theft of Federal Property, 18 U.S.C. § 641 (10 years in prison, forfeiture, and $250,000 fine). Criminal forfeiture means that personal assets can be seized to satisfy the full amount of the grant or contract, as well as any fines</td>
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<td>• Wire Fraud, 18 U.S.C. § 1343 (20 years in prison, forfeiture, and $250,000 fine)</td>
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# What are the consequences of committing Fraud?

**Criminal Prosecution**

In addition to criminal prosecution, individuals that commit fraud against the SBIR/STTR Programs are civilly liable based on the Civil False Claims Act, 31 U.S.C. §§3729-3733:

- Liability includes treble damages (3x actual damages) and a **fine of up to $11,000** for each false claim.
- False claims liability includes payments received when the Government relied upon false information in the SBIR/STTR 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 for the truth.”
- Whistleblowers can **receive up to 30%** of award for reporting fraud via **qui tam** provision of False Claims Act.

**Civil Liability**

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**Administrative Remedies**

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On top of criminal and civil liability, administrative remedies will be imposed on the small business and the individuals involved in committing fraud:

- The Government can **terminate contracts** tainted by fraud
- The Government can **debar** SBC, owner, and/or employees
- The debarred small business or individual can be **prohibited from receiving any federal contracts or working as a subcontractor on federal contracts** (debarment is typically for three years, but can be for longer)
FOR SMALL BUSINESSES

How do I prevent fraud?

Good Recordkeeping
The Government retains the right to *examine the status of an SBIR/STTR contract at any time.*

Status checks include:
- Site visits
- Requests for records including financial documents and timesheets

Good recordkeeping is key to protecting yourself. It will help eliminate suspicion and ensure successful status checks.

Documentation
Small businesses should maintain the following documentation while completing work on an SBIR/STTR award:
- Timesheets for hours worked by ALL involved employees
- All financial receipts, invoices, and statements for expenses related to the project
- Laboratory notebooks

In addition, Research Institutions should maintain the following documentation (if applicable):
- Agreements for use of research facilities
- Personnel logs for assistance from institution’s staff and/or students

Weekly or daily updates on the project’s status, including successes and failures, should be part of the process, if possible.

Ask Questions
If you are unsure about any of the rules relating to the award of an SBIR or STTR contract:
- Contact the appropriate contracting officer and provide all relevant facts
- Request written guidance from the contracting officer
- Follow the contracting officer’s guidance exactly
FRAUD CASE STUDIES
BENSON RENAUD - CEO
CBS Enterprises - Topeka, KS

8(a) Service-Disabled Veteran-Owned (SDVO) small business
Service offering: innovative systems, products, and solutions for small to medium telecom projects.

CBS won both Phase I and Phase II SBIR awards. The Phase I award is roughly $150,000 and the Phase II award will not exceed $1 Million. Unfortunately, the project expense was estimated at over $1.5 Million. As a result, Benson had to figure out ways to hugely lower the expense so that his company could make a profit.
BENSON RENAUD - CEO
CBS Enterprises - Topeka, KS

8(a) Service-Disabled Veteran-Owned (SDVO) small business
Service offering: innovative systems, products, and solutions for small to medium telecom projects.

If the project is subcontracted to newly starting standard 8(a) companies, it can be done under budget. CBS can help new businesses get more work.
To keep things simple and avoid complication, CBS Enterprises will bill the government as if they are doing the work. It's a win-win situation.
Benson was able to find 3 newly starting 8(a) companies that were hungry for work and were willing to work for lower prices. He has them sign an NDA without any other signed agreements between them and CBS. The subcontractors were able to complete the many task orders for less than planned.
BENSON RENAUD - CEO
CBS Enterprises - Topeka, KS

8(a) Service-Disabled Veteran-Owned (SDVO) small business
Service offering: innovative systems, products, and solutions for small to medium telecom projects.

CBS Enterprises is investigated and charged with multiple counts of fraud based on their misrepresentation of expended funds. Benson Renaud and CBS Enterprises received a penalty of $500,000 for passing subcontractor labor off as their own work.
June recently bought her dream home but unexpected renovations leave her short on money. She was in need of a short-term fix to finish what she’d started.
June oversaw the proposal team. Several SBIR projects from different federal agencies, including the DOD, were on her radar. She noticed a few potential projects which **required similar work**. If she could win **multiple awards for overlapping research**, she knew she could get away with it.
If June is caught, she was certain her punishment would be minor, because it would have been a first time offense and she could plead ignorance.

Insight Enterprises won awards from the DOD SBIR Program, as well as from other agencies. The company was happy growing their business. June is able to successfully complete her projects, pocketed bonuses, and comfortably finished her house project.
Insight is investigated. June committed a type of fraud referred to as **duplicative funding**, which is used to obtain multiple SBIR awards for the same overlapping work. She pleaded guilty to mail fraud and tax evasion.

The company paid almost **$2 million** in restitution, civil damages, taxes, and penalties. To avoid negative press, June negotiated a deal requiring her to retire.
Congratulations!
You've finished the lesson on Fraud
**What is Waste?**

Waste is extravagant, careless, or needless expenditure of government funds, or the consumption of government property that results from deficient practices, systems, controls, or decisions.

**Who's responsible for waste?**

Individuals who waste DOD resources can include contractors, subcontractors, civilian employees, and individual service members.

**What contributes to waste?**

A lack of knowledge and controls may limit even the best efforts to reduce waste.
A Small Business Contractor is Responsible for Waste When It Commits Fraud

Acts of fraud committed by small businesses when submitting proposals for SBIR/STTR awards can waste resources that otherwise could go to deserving businesses. Acts of fraud are more thoroughly covered in the fraud module.

Examples

- Submitting certifications that misrepresent a company's eligibility, including certifying that the company can do in-house research when it doesn't have the capability.
- Using SBIR funds to pay for cars, property, home renovations, or other purchases that enrich individuals, rather than completing research.
- Receiving funds, but not using the money to perform the agreed upon work.
- Receiving multiple payments for the same work product from different agencies.
Congratulations!
You've finished the lesson on Waste
DOD SBIR/STTR Training

ABUSE

July 2018
What is Abuse?
Abuse is the intentional or improper use of government resources that can include the excessive or improper use of one's position, in a manner contrary to its rightful or legally intended use.

Who's responsible for abuse?
Individuals who abuse DOD resources include DOD civilian employees and individual service members.

What contributes to abuse?
Corruption is the greatest contributor of abuse. It is the misuse of entrusted power.
Congratulations!
You've finished the lesson on Abuse and The Fraud Waste & Abuse Training.