



U.S. AIR FORCE



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Compliance with Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Program Rules



CONNECTING

INDUSTRY AND ACADEMIA WITH U.S. AIR FORCE NEEDS

SMALL BUSINESS INNOVATION RESEARCH | SMALL BUSINESS TECHNOLOGY TRANSFER

DISTRIBUTION STATEMENT A – Unclassified, Unlimited Distribution



In accordance with Sections 9(f)(1), 9(f)(2)(vii) and 9(f)(2)(viii) of the SBIR and STTR Policy Directives, the Air Force has developed this training to ensure compliance with the eligibility requirements for the SBIR and STTR programs. All firms are required to complete this training and provide a signed completion certificate prior to contract award. Failure to comply with these requirements will result in your SBIR/STTR proposal being ***ineligible for award.***



Questions?

If you have any questions regarding the content of this training, please contact:

Michele Tritt, AF SBIR Contracting Officer

michele.tritt@us.af.mil or (937) 656-6157





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PART I

Overview of SBIR and STTR Programs



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Introduction: SBIR

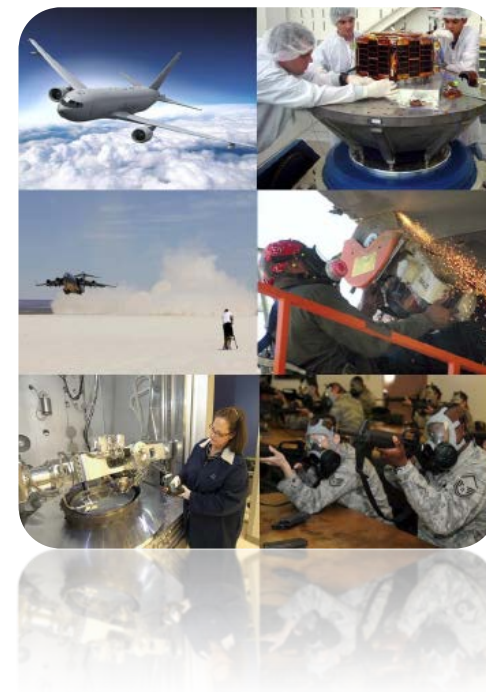
- **Federal program to strengthen the role of innovative small business concerns in Federally-funded research or research and development (R/R&D)**
- **Three-phased process encompassing (1) a technical feasibility study, (2) the demonstration and evaluation of commercial potential, and (3) transition to the marketplace**





SBIR Program Goals

- **Stimulate technological innovation**
- **Use small business to meet federal R/R&D needs**
- **Foster and encourage participation by socially and economically disadvantaged and woman-owned small businesses**
- **Increase private sector commercialization of innovations derived from federal R&D**





SBIR Program Eligibility

- **SBIR 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” – 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 US*
 - SBC cannot receive funding for a SBIR project essentially equivalent to other work they have performed for the Federal Government

* Includes Puerto Rico and Territories





SBIR Program Eligibility

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

NOTE: Deviations may be allowed for some requirements, with an approved waiver



Introduction: STTR

- **Federal program to stimulate a partnership of ideas and technologies between innovative small business concerns and U.S. research institutions**
- **Three-phased process similar to SBIR**





STTR Goals

The Small Business Technology Transfer Program funds cooperative R&D between small businesses and research institutions and 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 commercial product**





STTR Participation Eligibility

STTR participation requirements:

- For-profit **SBC** of 500 or fewer employees
- Research institution (RI) is a college or university, non-profit RI, or Federally Funded Research and Development Center (FFRDC)
- **SBC** must perform a minimum of 40% of the work; RI a minimum of 30%
- **SBC (prime)** must manage and control the **STTR** funding agreement
- Principal Investigator may be employed by **SBC** or RI
- Work must be performed in the **US** (Includes Puerto Rico and Territories)
- **SBC** cannot receive funding for a **STTR** project essentially equivalent to other work they have performed for the Federal Government



SBIR/STTR 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 ***will not exceed \$150K***
- Normally do not exceed 6 months technical effort with 3 months for final reporting



SBIR/STTR Three-Phase Process

Phase II

- Continuation of the R&D effort, funding the most promising Phase I projects
- Only those firms that were awarded Phase I contracts are eligible to submit a Phase II proposal, unless they are proposing against a Direct to Phase II topic
- Phase II awards are **typically \$750K**
- Normally do not exceed 2 years in duration



SBIR/STTR Three-Phase Process

Phase III

- **Commercializing work that derives from, extends, or completes an effort performed under prior SBIR/STTR agreements**
- **Phase III is the ultimate goal of each SBIR/STTR 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**





Differences between SBIR & STTR

- **Research Partner**
 - SBIR: Permits RI partners
 - STTR: Requires RI partners to perform at least 30 percent of the R&D work
- **Principal Investigator (PI)**
 - SBIR: Primary employment must be with SBC
 - Primary employment: >50% of the PI's time spent in employ of the SBC
 - Precludes full-time employment with another organization
 - STTR: Primary employment must be with the RI or the SBC
 - Primary employment: >50% of the PI's time spent in employ of the SBC or the RI
 - Precludes full-time employment with another organization





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PART II

Fraud in SBIR and STTR Programs



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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/STTR contracts include, but not limited to:**
 - Accepting federal funding on more than one SBIR/STTR 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 of the use of funds expended, work performed, results achieved, or compliance with program requirements under a SBIR/STTR award





Fraud Examples

- **Misuse or conversion of SBIR/STTR award funds (e.g. using funds for personal expenses)**
- **Fabrication, falsification, or plagiarism in applying for, carrying out, or reporting results from a SBIR/STTR award**
- **Failure to comply with applicable federal cost principles governing SBIR/STTR 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**





**You must follow the
SBIR/STTR program rules
or there will be
CONSEQUENCES**





Compliance Requirements

Essentially Equivalent Work is Prohibited

- **IMPORTANT** – It is **unlawful** to enter into multiple contracts or grants requiring essentially equivalent work. **SBIR/STTR** 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

- **Allegations:**

- 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
- 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

**Click below
for more information**

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
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and STUART A. MINKOWITZ
973-645-2786 and 2925

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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
973-645-2688

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



Compliance Requirements

The Primary Employer of the Principal Investigator (PI)

- **SBIR: The PI's primary employer must be the SBC**
- **STTR: The PI's primary employer must be the SBC or RI**
- **SBC cannot change the PI without the prior written consent of the Government**





Employment of PI Case Example

- **Allegations:**

- NASA SBIR contract was available only to those who agreed to work 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)

*Click below
for more information*



- **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
- **SBC** is at least **51%** owned by **U.S. citizens** or permanent resident aliens of the **U.S.**
- *For SBIR Phase I contracts, at least 2/3 of the work, and 50% for Phase II's will take place in the SBC's facilities with the SBC's employees*
- *For SBIR contracts, PI is primarily employed by the SBC*
- *Physical address of SBC is located in the U.S. or its territories*
- **SBC** has not been awarded any other **Federal Government** contracts or grants for essentially equivalent work
- **Disclosure of family or academic relationships with company owners or employees, subcontractors, etc.**





Phase I And II Certifications – Award and Life Cycle Submissions

- **All SBIR/STTR Phase I and II awardees must submit certifications at the following times:**
- **Award: Phase I and Phase II awardees- at time of award**
- **Life Cycle:**
 - Phase I awardees – prior to receipt of final payment
 - Phase II awardees – prior to receipt of more than half the total contract award amount **AND** before receipt of final payment
- **Certifications:**
 - The prime contractor met/meets the ownership and control requirements of an **SBC** set forth in 13 CFR 121.702

Click below to review certifications required at time of award



Click below to review certifications required during life cycle of the project





Certifications

Phase I And II Certifications – Award and Life Cycle Submissions

Certifications include:

- 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 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



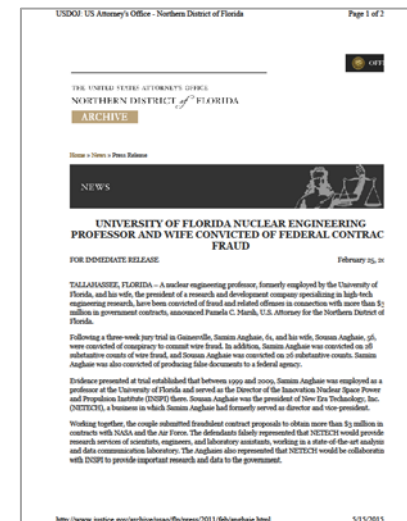
False Certifications Case Example

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

- **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

**Click below
for more information**





False Certifications Case Example

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 mos. prison, 3 years supervised release, \$390,252 forfeiture and \$100,000 fine
- Wife was sentenced to 6 mos. home confinement with similar financial penalties





Consequences of Committing Fraud

Criminal Prosecution

- **Lying to obtain an SBIR/STTR contract, or lying about the work performed violates several criminal laws:**
 - False Statements, 18 U.S.C. § 1001 (5 years in prison, forfeiture and \$250K fine)
 - Theft of Federal Property, 18 U.S.C. § 641 (10 years in prison, forfeiture and \$250K fine)
 - Wire Fraud, 18 U.S.C. § 1343 (20 years in prison, forfeiture and \$250K fine)

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





Consequences of Committing Fraud

Civil Liability

- **May be imposed in addition to criminal prosecution**
- **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



Consequences of Committing Fraud

Administrative Remedies

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





Recommendations

- **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 will help eliminate suspicion and ensure successful status checks**





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**
 - Weekly or daily if possible





Important to Remember!

- **If you are unsure about any of the rules relating to the award of a SBIR or STTR contract:**
 - Contact the appropriate Contracting Officer and provide all relevant facts
 - Request written guidance from the Contracting 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/STTR awardees**
 - Ensure you and your subcontractors/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.pmdtc.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/>

DoD SBIR/STTR website

- <http://www.acq.osd.mil/osbp/sbir/index.shtml>

Air Force SBIR/STTR web site

- <https://www.afsbirsttr.af.mil/>





Additional Resources

SBIR Policy Directive

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

STTR Policy Directive

- https://www.sbir.gov/sites/default/files/sttr_pd_with_1-8-14_amendments_2-24-14.pdf





Certificate of Training Completion

The undersigned has fully and completely reviewed this training on behalf of the proposer/awardee, understands the information presented, 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 or STTR contract or grant may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 USC 1001; treble damages and civil penalties under the False Claims Act, 31 USC 3729 et seq.; double damages and civil penalties under the Program Fraud Civil Remedies Act, 31 USC 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 CFR Part 180; and other administrative remedies including termination of active SBIR/STTR awards.

Signature

Date

Name

Firm Name and Position Title

Proposal #

