

## COURSE 14, TUTORIAL 1

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# WHAT IS FRAUD?



**T**he Small Business Innovation Research (SBIR) and the Small Business Technology Transfer (STTR) programs have been identified as areas where incidents of fraud, waste and abuse, commonly referred to as FWA, can be prevented. The 2011 SBIR/STTR Reauthorization and the 2014 SBIR Policy Directive from the U.S. Small Business Administration (SBA) provide an outline for minimizing the risk of fraud, waste and abuse in the SBIR and STTR programs. In addition, the U.S. Government Accountability Office (GAO) released a report in April 2017 discussing the need for agencies to take additional action to implement FWA prevention requirements. This course will provide definitions and examples of FWA specific to the SBIR and STTR programs, and also discuss the penalties.

### WHAT IS FRAUD?

Fraud is described as “any false representation about a material fact or any intentional deception designed to deprive the United States unlawfully of something of value or to secure from the United States a benefit, privilege, allowance, or consideration to which an individual or business is not entitled.”<sup>1</sup> Fraud can be committed by government contractors and subcontractors, as well as by agency personnel. Within the SBIR/STTR programs, there are three points during the process where fraud can occur: during the application process; within the proposal itself; and during the time period in which the award is given.

During the application process, examples of fraud include submitting plagiarized proposals and submitting proposals to multiple agencies for duplicative research without proper notification. Within the proposal, false information about the company, the principal investigator (PI), and/or the research

to be conducted can constitute fraud. Using SBIR/STTR funds for personal use or any use other than those activities specified in the proposal and award during the SBIR performance period can lead to fraud investigations. Accepting funding from multiple agencies for duplicative research would also be considered fraud.

Most SBIR and STTR solicitations contain both a section and a warning related to submitting “Similar or Duplicative Proposals or Awards”. While it is permissible, with proper notification, to submit identical proposals or proposals containing a significant amount of essentially equivalent work for consideration under numerous federal program solicitations, it is unlawful to enter into contracts or grants requiring essentially equivalent effort.

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<sup>1</sup> SBA SBIR Policy Directive



**There are three points where fraud can occur in the SBIR/STTR programs:**

- 1. During the application process**
- 2. Within the proposal itself**
- 3. When the award is given**



#### **FOUR TYPES OF FRAUD**

There are four main types of fraud. The first type of fraud is **misrepresentations or factual omissions** exercised in order to obtain funding under an SBIR/STTR solicitation. Misrepresentations can include submitting false certifications about research, eligibility, and company capabilities, submitting inaccurate labor rates, falsified letters of reference, and identifying ineligible PIs. The next type of fraud is **misrepresentation of expended funds**, which can include misrepresenting how funds were used, as well as misrepresenting work done, results achieved, and program requirement compliance. Research recycling can fall under this category.

The third category of fraud, the **misuse of award funds**, includes using the funds to pay for purchases other than the funded research and funneling SBIR funds to personal accounts, through methods such as falsifying time sheets or overpaying vendors to conceal the improper use of funds. Finally, **duplication of funds** refers to receiving multiple SBIR awards from the same or different agencies to conduct the same research. This includes submitting identical deliverables for work that is supposed to be separate.

Additional types of fraud include **self-dealing** which occurs when providing subcontracts to entities where the primary investigator or their family has financial interest, and failure to comply with applicable federal cost principles.

#### **CONSEQUENCES OF COMMITTING FRAUD**

Organizations and individuals who are convicted of committing fraud can face criminal law consequences, civil liabilities, and administrative actions. Criminal law violations include: **False Statements**, which can be punishable by up to five years in prison, forfeiture and a \$250,000 fine; **Theft of Federal Property**, carrying a punishment of up to 10 years in prison, forfeiture and a \$250,000 fine; **Wire Fraud**, which carries a punishment of up to 20 years in prison, forfeiture and a \$250,000 fine; and **False Claims**, which

is punishable by up to a \$250,000 fine for individuals and a \$500,000 fine for companies.



Civil liabilities for fraud can include treble damages, or three times the actual damages to the government, as well as an \$11,000 fine for each false claim. Administrative remedies can be incurred in addition to civil and criminal liabilities. The Government can terminate contracts where there is fraud. In addition, small businesses, owners and employees can be debarred for three years or more. Debarred small businesses and individuals can be banned from receiving federal contracts or subcontracts.



## **INDICATORS OF FRAUD**

Indicators of fraud in the SBIR/STTR programs include whether the small business meets SBIR/STTR eligibility requirements, substandard performance, mischarging, and defective pricing.

## **EXAMPLES OF FRAUD**

Examples of fraud include submitting false certifications, inaccurate labor rates, falsified letters of support, and identifying a PI who does not meet the criteria of being primarily employed by the small business and does a significant amount of the work. Using funds for purposes other than the proposed research, including for personal reasons, is another example of fraud. In addition, recycling research performed under a previous contract and falsifying or plagiarizing data can be considered fraud. Subcontracting work without the government's knowledge is a further example of fraud.

Providing kickbacks to government officials in return for receiving SBIR funding is another example of fraud. Finally, submitting, and not disclosing to the government, duplicate proposals and receiving multiple awards for overlapping research can be considered fraud. Also, submitting identical deliverables for work that is supposed to be separate can be fraud.

## **HOW TO PREVENT FRAUD**

Small businesses can work to prevent fraud in several ways. As status checks can include both site visits and requests for records such as financial documents and timesheets, good recordkeeping is pivotal for small businesses to prevent fraud. In keeping with good recordkeeping, it is important to keep good documentation including timesheets for all involved employees, all financial receipts and invoices related to the project, and laboratory notebooks. Research institutions should also keep agreements for use of research facilities and personnel logs. Finally, small businesses should provide weekly, or even daily, project status updates of both project successes and failures whenever possible.

Government personnel can work to prevent fraud by ensuring that communication lines with contractors and awardees are open. It is also important to follow established rules and policies pertaining to the SBIR and STTR programs. The work performed under the award and the contract terms of the award must be reviewed in order to keep awardees accountable.

To help prevent fraud, SBIR awardees are required to provide certifications that the small business meets the size, ownership and other requirements of the SBIR program at the time of award, after the award and during the funding agreement lifecycle. In addition, small businesses must certify that the work being done under the award is not essentially equivalent to other federally funded awards made to the company. The full text of the certifications are included in the appendix of the SBIR Policy Directive.