



DoD SBIR/STTR Training

FRAUD

January 29, 2016



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



DoD SBIR/STTR Training

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 award

Examples

- ▶ Submitting **false certifications**, including representations that the company would not duplicate its research from another SBIR 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 contract award.
- ▶ Providing **falsified letters** of reference.
- ▶ Identifying a primary investigator that is **not primarily employed** by the small business or does **not perform a significant amount** of the work.



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** or **research institute** submitting a proposal.

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

- Not accurately reporting the primary investigator's place of employment accurately is fraud.
- Failing to report this information properly is a federal offense.



Required certification when submitting 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.
- 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
- Disclosure of family or academic relationships with company owners or employees, subcontractors, etc.
- **For SBIR contracts, at least 2/3 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**

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 other purposes

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



Type 2

Misrepresentations or expended fund

Misrepresentations of the use of funds expended, work done, results achieved, or compliance with program requirements under an SBIR 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 contracts.
- ▶ Invoicing the government for the same equipment and materials **under different SBIR 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 award funds, including any use of award funds while not in full compliance with SBIR Program requirements, or failure to pay taxes due on misused or converted SBIR award funds

Examples

- ▶ Funneling SBIR funds in to **personal bank accounts** and **falsifying time sheets** to conceal the improper use of funds.
- ▶ Using SBIR 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 grants.



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 **received 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 research topics towards topics **previously funded by other SBIR agencies** to facilitate research recycling.



FRAUD

What is Duplication of Funds?

It is unlawful to enter into multiple contracts or grants requiring essentially equivalent work. SBIR/STTR awards must certify at the time of proposal submission 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

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 costs principles governing an award.



What are the consequences of committing Fraud?

Criminal Prosecution

Civil Liability

Administrative Remedies

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:

- 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) Criminal forfeiture means that personal assets can be seized to satisfy the full amount of the grant or contract, as well as any fines.
- Wire Fraud, 18 U.S.C. § 1343 (**20 years in prison**, forfeiture, and \$250K fine)



What are the consequences of committing Fraud?

Criminal Prosecution

Civil Liability

Administrative Remedies

In addition to criminal prosecution, individuals that commit fraud against the SBIR/STTR program 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.



What are the consequences of committing Fraud?

Criminal Prosecution

Civil Liability

Administrative Remedies

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 GOVERNMENT EMPLOYEES

How do I prevent fraud?

- Keep **open lines of communication** with your contractors and awardees.
- **Followed established rules and policies** when dealing with contractors and awardees.
- **Keep contractors and awardees accountable** by reviewing the work performed and ensuring it complies with the terms of the contract and the agreed upon work to be performed.

If you suspect any irregularities or criminal acts contact the DoD Inspector General immediately.

<http://www.dodig.mil/hotline/>

Hotline: (800) 424-9098

Email: hotline@dodig.osd.mil

Continue to do your job normally. Don't feel compelled to act as a detective and prove the case. The Office of Inspector General will conduct the investigation.



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

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.

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.

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 **\$150K** 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.

Motivation

Rationalization

Opportunity

Consequence



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.

Motivation

Rationalization

Opportunity

Consequence



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.

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 was able to complete the many task orders for less than planned.

Motivation

Rationalization

Opportunity

Consequence



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.

Motivation

Rationalization

Opportunity

Consequence



JUNE JACOBS | Head of Business Development

Insight Enterprises - Dublin, OH

Service offering: innovative systems, products, and solutions for small to medium telecom projects.

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.

Motivation

Opportunity

Rationalization

Consequence



JUNE JACOBS | Head of Business Development

Insight Enterprises - Dublin, OH

Service offering: innovative systems, products, and solutions for small to medium telecom projects.

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.

Motivation

Opportunity

Rationalization

Consequence



JUNE JACOBS | Head of Business Development

Insight Enterprises - Dublin, OH

Service offering: innovative systems, products, and solutions for small to medium telecom projects.

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, as well as the SBIR of 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.

Motivation

Opportunity

Rationalization

Consequence



JUNE JACOBS | Head of Business Development

Insight Enterprises - Dublin, OH

Service offering: innovative systems, products, and solutions for small to medium telecom projects.

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.

Motivation

Opportunity

Rationalization

Consequence



MICHAEL STEVENSON | CEO & Chief Scientist

Intelligent Wear - Los Angeles, CA

Service offering: Research and product development for wearable technology.

Michael spent years trying to build up his company, Intelligent Wear, through client work and several SBIR contracts. After nearly a decade he couldn't seem to grow the company beyond its humble beginnings. Though, he was able to secure SBIR contracts nearly every year, Michael wanted a more stable source of income. So, after submitting a final DoD SBIR proposal in which he was **listed as the primary investigator**, he applied for several jobs in the area.

Motivation

Opportunity

Rationalization

Consequence



MICHAEL STEVENSON | CEO & Chief Scientist

Intelligent Wear - Los Angeles, CA

Service offering: Research and product development for wearable technology.

Michael heard back from many of the employers he applied to, and after a few rounds of interviews, decided to accept one of the jobs. A few weeks into his new job, he received news that his DoD SBIR proposal had been accepted. Unfortunately, Michael was now **working a full-time job**. As the primary investigator in the proposal, Michael was **required to be primarily employed by the small business**, which was no longer the case.

Motivation

Opportunity

Rationalization

Consequence



MICHAEL STEVENSON | CEO & Chief Scientist

Intelligent Wear - Los Angeles, CA

Service offering: Research and product development for wearable technology.

Michael considered informing the DoD that he would no longer be able to work on the contract because he had found another job, but after some consideration he thought he would be able to **work his new day job and also compete the research during nights and evenings**. The SBIR research was for wearable technology, a topic he was every excited and passionate about, but was not part of his day job. He **accepted money from the contract** to begin his research.

Motivation

Opportunity

Rationalization

Consequence



MICHAEL STEVENSON | CEO & Chief Scientist

Intelligent Wear - Los Angeles, CA

Service offering: Research and product development for wearable technology.

The demands of Michael's day job caused him to fall behind on his SBIR research. When SBIR officials investigated the project they learned about Michael's day job, which he failed to disclose. **Not accurately reporting the primary investigator's place of employment accurately is fraud.** Michael plead guilty to one count of wire fraud, is placed on probation for three years, and must pay \$133,333.00 in restitution to the Government.

Motivation

Opportunity

Rationalization

Consequence



Congratulations!

You've finished the lesson on Fraud