



Department of the Navy SBIR/STTR Programs Fraud, Waste, and Abuse (FWA) Tutorial for Small Businesses

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Tutorial Topics

- Statutory Requirements
- Education and Awareness
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- Certifications
- Areas for Potential Fraud, Waste, and Abuse
- Consequences of Committing Fraud
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Statutory and SBA Policy Directive Requirements

- 15 USC 638 (k)(2)
 - §638(k)(2): ...a database to be used exclusively for SBIR and STTR program evaluation that... [§638(k)(2)(G)] includes a timely and accurate list of any individual or small business concern (SBC) that has participated in the SBIR program or STTR program that has been—
 - (i) convicted of a fraud-related crime involving funding received under the SBIR program or STTR program; or
 - (ii) found civilly liable for a fraud-related violation involving funding received under the SBIR program or STTR program.
- 2019 SBA SBIR/STTR Policy Directive
 - (9)(f)(1): Agencies shall evaluate risks of fraud, waste, and abuse in each application, monitor and administer SBIR/STTR awards, and create and implement policies and procedures to prevent fraud, waste and abuse in the SBIR/STTR program. To capitalize on Office of Inspector General (OIG) expertise in this area, agencies must consult with their OIG when creating such policies and procedures.



Education & Awareness

To educate small business concerns (SBCs) and increase awareness about FWA, the DON SBIR/STTR Programs have implemented the following:

- FWA webpage: <https://navysbir.com/fwa.htm>
- FWA tutorial:
https://www.navysbir.com/links_forms.htm
- Requirement for Principal Investigators (PIs) to certify, on the Fraud, Waste, and Abuse Tutorial Certification slide in the Phase I Kickoff briefing, that they have read the Fraud, Waste, and Abuse Tutorial and understand its content and implications



Definitions

- **FRAUD:** 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.
- **WASTE:** Extravagant, careless, or needless expenditure of Government funds, or the consumption of Government property that results from deficient practices, systems, controls, or decisions.
- **ABUSE:** Any intentional or improper use of Government resources, such as misuse of rank, position, or authority or resources.



Certifications

- Affirmative statements that the information the SBC provided is true, and that the SBC will follow, is following, or has followed the various requirements of the programs.
- The Government relies on these certifications when making its decisions, including whether to make an award.

Example:

(8) During the performance of the award, the principal investigator will spend more than one half of his/her time as an employee of the awardee or has requested and received a written deviation from this requirement from the funding agreement officer.

Yes

No

Deviation approved in writing by funding agreement officer: _____ %

Areas for Potential Fraud, Waste, and Abuse

The following slides include a sample of areas
where FWA could occur.

It is not a comprehensive list of areas nor examples.



Areas for Potential FWA

Not Meeting SBIR/STTR Eligibility Requirements

- Not 51% (or more) owned by an entity that meets the small business requirements
- Not meeting SBA size requirements (less than 500 employees including affiliates)
- Not having adequate facilities to perform the required work
- Does not primarily employ the PI listed in the proposal
- Subcontracts require Government approval



Areas for Potential FWA

Multiple Agency Payments

- DON will not make awards that duplicate or substantially overlap research funded by other federal agencies, or public or private entities.
- You must disclose whether your company has:
 - Received awards for related work, or
 - Submitted or intends to submit proposals for similar work to any other program.



Areas for Potential FWA *Recordkeeping*

- Document your budget estimates
 - Retain subcontractor/vendor quotations
 - Notify the Contracting Officer if circumstances change
- Post-Award: document your expenditures
 - If any budget items were disapproved upon award, do not spend contract funds on those items
 - Account for award funds – ***tracked separately from other funds!***
 - Keep good records: receipts, invoices, statements, time records
 - ***Track DON project time separately from other time!***
 - Under Phase II, report actual expenditures accurately!



Areas for Potential FWA

Recordkeeping

- Accurate recordkeeping is the key to protecting the SBC and its responsible parties from the potentially detrimental consequences of FWA.
- Record and keep:
 - timesheets for hours worked by **ALL** involved employees.
 - **all** financial receipts, invoices and statements for expenses related to the project.
 - applicable laboratory notebooks from research institutions
 - agreements for use of research facilities.
 - research institution personnel logs on project assistance by staff and/or students.
 - project status updates, including successes/failures.



Areas for Potential FWA

Firm Fixed Price Awards

- Fixed Amount Award \neq Free Money.
- You are responsible for the proper use of funds
 - DON anticipates that the full award amount will be paid without regard to the actual cost subsequently incurred. Payment of this amount, however, is subject to compliance with the award terms and conditions.
 - If estimated total expenditures are significantly less than the award amount, DON reserves the right to renegotiate the amount of this award.
- You can only spend DON award funds on the project and allowable costs!



Areas for Potential FWA *Costs*

- Allowable costs do not include:
 - Personal credit card debt
 - Vacations
 - Home mortgage payments
 - Childcare bills
 - A spouse's or employees' speeding tickets
 - A new home
 - Personal investments
 - Personal car repairs and maintenance
 - Jewelry and clothing



Areas for Potential FWA

Indirect Costs

- Indirect costs are ***not*** a piggybank.
- An SBC can spend legitimate indirect cost money on any general business expenses not prohibited by the BAA or contract conditions.
- However, ***legitimate*** indirect costs are a percentage of ***legitimate*** direct costs.
- An SBC ***cannot*** charge indirect costs on ***unallowable*** direct costs.
- An SBC ***cannot*** charge fringe benefits for ***unallowable*** salary charges.



Areas for Potential FWA

Work Requirements

- SBIR: at least two-thirds of the work must be performed by the SBC in Phase I and at least one-half of the work in Phase II.
- STTR: for both Phase I and II, at least 40% of the work must be performed by the SBC and at least 30% of the work must be performed by a single partnering Research Institution.
- Work performed in a university lab is NOT performed by the company – even if it is performed by the PI – unless there is a formal agreement in place!



Areas for Potential FWA

PI Work Requirements

- SBIR: PI's primary employment must be with the SBC at the time of award, and throughout the award period. Primary employment is defined as 51% employed by the SBC. Full time work week is normally 40 hours; employment elsewhere of greater than 19.6 hours is in conflict with this requirement.
- STTR: PI may be employed with the firm or the Research Institution.
- Change of PI requires written request to the Contracting Officer ***followed by*** written approval.



Areas for Potential FWA

Technical Proposal Content

- The content of the technical proposal must represent the SBC's work and ideas; including the work of others, without their consent or acknowledgement, is plagiarism and will be forwarded for criminal investigation.
- Letters of Support:
 - Must refer to a specific proposal, should be dated, and cannot be reused!
 - Must provide a contact that is reachable at the contact address provided and be aware that they supported the proposal in which their letter appeared.
 - Fabricated letters of support, or letters modified without the signatory's knowledge or consent, are false statements.



Consequences of Committing *Fraud*

Lying to Obtain an SBIR/STTR Contract or Lying about the Work Performed

- ***Criminal Prosecution***
 - False Statements: 18 USC §1001 – 5 yrs in prison, forfeiture, \$250K fine
 - Theft of Federal Property: 18 USC §641 – 10 yrs in prison, forfeiture, \$250K fine
 - Wire Fraud: 18 USC §1343 – 20 yrs in prison, forfeiture, \$250K fine
- ***Criminal Forfeiture***
 - Full amount of grant/contract
 - Possible seizure of personal assets to satisfy forfeiture or fine
- ***Civil Liability***
 - Treble (3x) actual damages
 - Fine of up to \$11,000 for each false claim (for example, payments received (1) when the Government relied upon false information in the SBIR/STTR proposal, (2) in a certification of current cost or pricing data, (3) in a request for payment or (4) in progress reports)
 - Civil liability damages may be imposed in addition to criminal prosecution per Civil False Claims Act, 31 USC §§3729-3733

For reporting fraud via the *qui tam* provision of the False Claims Act, whistleblowers can receive up to 30% of any judgment award.



Administrative Remedies

In addition to Criminal and Civil Liabilities, the Government can implement administrative remedies to:

- terminate contracts tainted by fraud.
- debar the related SBC, owner, and/or employees from SBIR/STTR programs (typically for 3 years).
- prohibit the relevant SBC from receiving any federal contracts.
- prohibit the relevant people from working as subcontractors on federal contracts.



Quick Reference

DO

- Include only truthful information in proposals re: company size, facilities, personnel, consultants, subawards, supporters, etc.
- Include only truthful certifications as to eligibility requirements at each phase of the award, from proposal to reports.
- Read the applicable rules and follow them. Certify on multiple occasions that you have done so.
- If you have questions, ask the Contracting Officer!

DON'T

- Certify to things you aren't sure about (or know to be false).
- Make up bios or publications for people in proposals.
- Plagiarize, fabricate, or falsify text or figures in proposals or reports.
- Describe in proposals facilities, equipment or employees that you don't have.
- Alter or fabricate letters of support.
- Create fake accounting documents.
- Use award funds for personal expenses (except for allowed profit and legitimately earned salary).



Fraud, Waste, and Abuse (FWA) Summary

The Department of the Navy:

- Takes occurrences of FWA seriously.
- Continues efforts to prevent FWA.
- Hosts an SBIR/STTR FWA webpage to promote awareness here navysbir.com/fwa.htm
- Provides an online *Fraud, Waste, and Abuse Tutorial* to educate SBCs here navysbir.com/links_forms.htm

Report suspected or detected FWA to:

www.secnav.navy.mil/ig/Pages/ComplaintProcedure.asp
or <https://www.ncis.navy.mil/Resources/NCIS-Tips/>