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# Audits

- We used to audit SBIR awards, found many administrative problems & questioned costs
- SBIR awards are now fixed-price, so no more audits
- Oh, but don't imagine you're off the hook... . . . .

# Investigations

- We used to investigate fraud in receipt and use of SBIR grant funds, had numerous successful civil and criminal cases
- For a few years we had fewer SBIR cases, but recently we've seen a resurgence
- The resurgence is due to our proactive activities and other SBIR agencies' OIGs getting interested in SBIR

There  
are  
rules

OIG investigates  
*only* if the alleged  
rulebreaking  
constitutes *fraud*

# Fixed Amount Award $\neq$ Free Money

- ***You are responsible for proper use of funds***
  - “NSF 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, ***NSF reserves the right to renegotiate the amount of this award.***”
- ***Your profit is capped by the budget,  $\leq 7\%$***
- ***You must disclose if you spent all award funds, and if not you must explain***

# Good Contemporaneous Records

- Document your budget estimates
  - Retain subcontractor/vendor quotations
  - Notify the program officer if circumstances change before you receive the award
- ***Post-Award: document your expenditures***
  - If any budget items were disapproved upon award, do not spend grant funds on those items
  - ***Keep good records: receipts, invoices, statements, time records***
  - Subcontracts or equipment purchases above \$5,000 not in approved budget must be pre-approved
  - Under Phase II, report actual expenditures ***accurately***

# Must be a Small Business

- Company must fit SBA's definition of Small Business Concern, such as:
  - U.S. ownership
  - Fewer than 500 employees (including subsidiaries, parent, other affiliates)
- For Phase II, must be the same small business that received Phase I
  - Transfer of the rights to submit a Phase II proposal from a company that had the Phase I award to another company is very very rare but can be done: contact the PO.

# No Duplicate Funding

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

Oh,  
by the way,  
regarding duplicative  
proposals and reports...

## □ Current and Pending Support (C&PS)

- Intended to show that the PI and senior personnel have time available to perform the proposed research during the grant period
- Must provide information about all research to which the PI and other senior personnel either have committed time or plan to commit time

(If you lie about duplicative proposals/awards, you'll probably have to lie about C&PS too)

# Work by the Grantee

SBIR: at least two thirds of the work must be performed by the grantee company

STTR: at least 40% of the work must be performed by the grantee company

**do the work!**

Work performed in a university lab is NOT performed by the grantee company — even if it is performed by the PI

## PI's Primary Employment

- **The PI *really* truly works for the company!**
  - The PI's primary employment must be with the small business at the time of award
    - "Primary employment is defined as 51% employed by the small business. NSF considers a full time work week to be normally 40 hours and considers **employment elsewhere of greater than 19.6 hours to be in conflict with this requirement.**"
    - Change of PI requires advance written request via FastLane and approval by NSF

□ If you are unsure about any of the rules:

1. Email your PO with all relevant facts,
2. Get written guidance from the PO, and
3. Follow it.

□ Do that *in advance*, and we won't be able to prosecute you

□ Do that TODAY and it will go better for you... . . . . .

# Research Misconduct

- Fabrication, Falsification, & Plagiarism\*
- Standards of research integrity are the same for small businesses and the academic community
- Our RM investigative process differs:
  - At research institutions, we refer RM allegations to the institution to investigate, then we review
  - We investigate all RM allegations involving small businesses

**There are  
certifications**

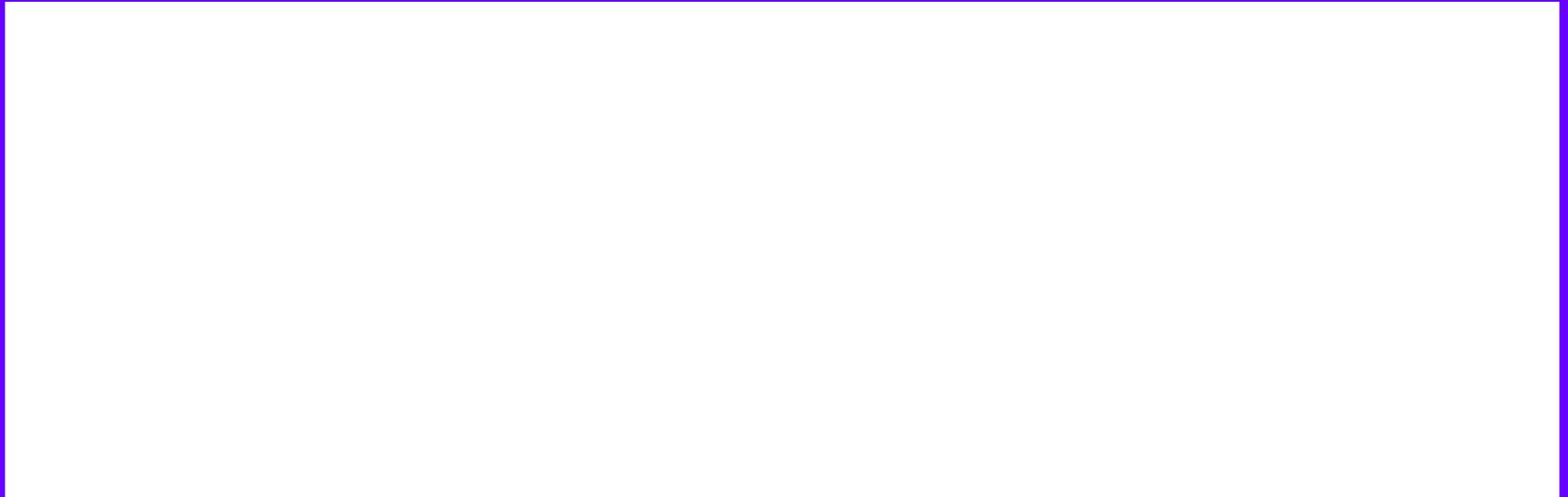
**You certify  
when you apply**

You certify before  
you get the award

# You also provided:

- Agreement or commitment letters from subawardees, signed by authorized institutional officials
- Physical address where the project will be performed, and documentation of lease agreements for all leased facilities
- List of your company's owners and officers, including a disclosure of their current employers
- PI disclosure of family or academic relationships with company owners or employees, subcontractors, etc.

Q: What should you do  
if you get an award  
from another agency  
for the same or overlapping  
work?



You certify  
to get your first  
payment

You certify  
when you report

What will happen  
to you if you  
lie or steal?

# Criminal Liability

# Criminal Liability

=

Get arrested + go  
to jail + pay money

- Lying to obtain an SBIR grant, or lying about what you did under a grant, violates several criminal laws, such as:
  - False Statements, 18 USC §1001
  - Theft of Federal Funds, 18 USC §641
  - Wire Fraud, 18 USC §1343
  
- You can go to prison, and have to pay full restitution plus fines

- Using SBIR grant funds for your personal use:

- Criminal conversion, 18 USC §641
- And, if you don't report it on your 1040: tax evasion, 26 USC §7201

- Lying to OIG or destroying evidence:

- Obstruction of justice, 18 USC §1505, e.g. Martha Stewart (5 mos + \$30K + \$195K to SEC)
- False statements, 18 USC §1001, e.g. Rod Blagojevich (14 years + \$20K)

# Civil Liability

Civil Liability

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Pay lots of money

# □ The False Claims Act

- **Treble damages** plus a fine of \$11,000 for each false claim
- “False Claims” include false information in the SBIR proposal, the Certification of Current Cost or Pricing Data, the Request for Initial Payment, and progress reports
  - For example, a false Phase I final report is a false claim for the final Phase I payment and for the full Phase II award
- FCA multiple damages & fines are ***in addition*** to criminal sentence and full restitution

## □ US ex rel. Longhi v. Lithium Power

- Company lied about its qualifications to receive SBIR awards
- No issue about its performance under the awards
- “In a case such as this, where there is no tangible benefit to the government and the intangible benefit is impossible to calculate ...

# Administrative Action By NSF

Administrative Action

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Nix current awards

+

No more federal money

- Termination of Current Awards
- Program Fraud Civil Remedies Act:  
***double damages***
- Suspension and Debarment
  - Prohibited from receiving federal awards ***or*** working under someone else's awards
  - Suspension during investigation and prosecution, then debarment for ***3+ years***
  - Debarment is ***in addition*** to FCA multiple damages & fines, which are ***in addition*** to criminal sentence and full restitution

Do you feel lucky?

If, at this point, everything seems to be going well, next month you can submit a proposal for...

# Supplemental Funding

- Intended to bridge Phase I & II
  - NSF provides up to 20% of Phase I award, which you must match 2:1 with outside investment
  - *Outside* investment cannot come from you, your children, your parents...
- NSF money must be spent on the project's R&D; outside money may also be spent on other business efforts related to the project
  - You can't just pay it back to the outside investor...

Do you feel *really* lucky?

If everything goes well,  
and you write a great report,  
and you write a great proposal,  
you may get a...

# Phase II

- More money ***and*** concomitant responsibility:
  - You have to convince NSF's financial folks of your company's "ability to effectively and efficiently manage a Federal award", scrutiny that is absent in Phase I
  - In your semiannual progress reports, you provide specific information about progress on tasks, who worked, and ***how much money you actually spent***

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# True Stories

**Manoj Jha**

## □ Fraud:

- Owner of small business used SBIR funds for personal expenses, such as mortgage payments (several months at once!) and credit card debt (paid off!)
- Submitted \$100,000 checks to NSF to prove outside investment, to obtain Phase 1B supplement, which he never intended to cash (and he didn't — we found the checks when we executed a search warrant)
- He was also a university professor with a DoD grant, under which he arranged stipend payments to students *and required them to repay most of the money to him*

□ And...

- He declined to plead guilty, so we went to trial...

## □ At sentencing, he claimed:

- There was no loss to the government, because he provided reports...
- The stipend money he forced his students to pay him was used for their benefit...
- He's a great scientist and terrific human being...

**“Excel Technology,  
Inc.”**

## □ Fraud:

- Two companies with the same owner, received duplicate SBIR awards from several agencies for the same work
- PIs' primary employment was falsified
- Research had actually been conducted by a university lab, not by the company

**“Clinical &  
Industrial  
Technology, Inc.”**

## □ Fraud:

- University professor applied for SBIR Phase I grant in name of wife's non-existent company (without wife's or university's knowledge)
- No research performed under Phase I; Prof & wife wrote checks to selves for non-existent expenses
- Phase I final report was copied verbatim from prof's student's thesis
- NSF awarded Phase II on basis of Phase I report
- Prof & wife received first payment, wrote checks to themselves for non-existent expenses

- University discovered Prof's activities, notified NSF; we investigated
- Settlement with DOJ:
  - Before the start of negotiations, Prof & wife repaid \$199K of grant funds, and made an unrestricted & unsolicited donation of \$27.5K to NSF

**“M.L. Energia, Inc.”**

## □ Fraud:

- Owner of small business (1) submitted falsified SBIR reports and (2) used SBIR funds for personal expenses (such as renovations of his home) and to make excessive payments to vendors so he could pocket the reimbursements

**Any  
Questions?**

To confess  
(or rat out somebody else)  
call or email me:

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