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□ **What we do to prevent / deter:**

- **Good relationship with program officers**
 - **Meet with them to discuss trends**
 - **Review draft solicitations, award conditions, and the Policy Directive**
- **Learn from our investigations:**
 - **Recommendations for program changes**
 - **Seek new cases based on risk factors**
- **Presentation to Phase I workshops**

What

we

do

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 (1) our proactive activities, (2) NSF's vigilant SBIR program officers, and (3) other SBIR agencies' OIGs getting interested in SBIR

There
are
rules

Follow
the
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, $\leq 7\%$***
- ***At the end, 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 your program officer if circumstances change
- ***Post-Award: document your expenditures***
 - If any budget items were disapproved upon award, do not spend grant funds on those items
 - Account for award funds ***separately from other funds***
 - ***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

□ 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
- 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'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

Letters of Support

- Must contain affiliation and contact information for the signatory stakeholder
- Should be dated and specifically refer to ***this proposal***
- A ***fabricated*** letter of support ***is a false statement***
- A ***re-used*** letter of support ***is a false statement***
- A ***modified*** letter of support ***is a false statement***

Indirect Costs

- Indirect costs are *not* a piggybank
- You can spend your legitimate indirect cost money however you want
- *However, legitimate* indirect costs are a percentage of your *legitimate* direct costs
- You *cannot* charge indirect costs on *bad* direct costs
- You *cannot* charge fringe benefits for *bad* salary charges

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**



Small Business Innovation Research

SBIR/STTR Phase I Topic:

SBIR/STTR Phase I Subtopic Letter(s), required: (ex. A1a)

The Small Business Concern Certifies That:

1. It is a small business as defined in the solicitation.
 - YES
 - NO
2. It qualifies as a socially and economically disadvantaged business as defined in the solicitation (FOR STATISTICAL PURPOSES ONLY)
 - YES
 - NO
3. It qualifies as a women-owned business as defined in the solicitation (FOR STATISTICAL PURPOSES ONLY)
 - YES
 - NO
4. SBIR: A minimum of two-thirds (66 2/3%) of the research will be performed by this firm

NO

3. It qualifies as a women-owned business as defined in the solicitation (FOR STATISTICAL PURPOSES ONLY)

YES

NO

4. SBIR: A minimum of two-thirds (66 2/3%) of the research will be performed by this firm in Phase I.

STTR: It will perform at least 40 percent of the work and the collaborating research institution will perform at least 30 percent of the work as described in the proposal.

YES

NO

5. The primary employment of the Principal Investigator (PI) will be with this firm at the time of award and during the conduct of the research.

YES

NO

6. It will permit the government to disclose the title and technical abstract page, plus the name, address and telephone number of a corporate official, if the proposal does not result in an award, to parties that may be interested in contacting the small business for further information or possible investment.

YES



The Certification Information that you enter below can be edited by your organization's Authorized Organization Representative(s) within the "Submit Proposal" module of the Research Administration application.

Certification for Authorized Organizational Representative or Individual Applicant:

By electronically signing the proposal, the individual applicant or the authorized official of the applicant institution is: (1) certifying that statements made herein are true and complete to the best of his/her knowledge; and (2) agreeing to accept the obligation to comply with NSF award terms and conditions if an award is made as a result of this application. Further, the applicant is hereby providing certifications regarding debarment and suspension, drug-free workplace, and lobbying activities (see below), as set forth in the *Grant Proposal Guide (GPG)*, NSF 02-2. Willful provision of false information in this application and its supporting documents or in reports required under an ensuing award is a criminal offense (U.S. Code, Title 18, Section 1001).

In addition, if the applicant institution employs more than fifty persons, the authorized official of the applicant institution is certifying that the institution has implemented a written and enforced conflict of interest policy that is consistent with the provisions of Grant Policy Manual Section 510; that to the best of his/her knowledge, all financial disclosures required by that conflict of interest policy have been made; and that all identified conflicts of interest will have been satisfactorily managed, reduced or eliminated prior to the institution's expenditure of any funds under the award, in accordance with the institution's conflict of interest policy. Conflicts which cannot be satisfactorily managed, reduced or eliminated must be disclosed to NSF.

You certify before
you get the award

(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*** (NSF defines more than half the time as 51% based on a 40 hour work week) 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: __%

(9) ***All, essentially equivalent work, or a portion of the work proposed under this project*** (check the applicable line):

Has not been submitted for funding by another Federal agency.

Has been submitted for funding by another Federal agency but ***has not been funded...***

A ***portion has been funded*** by another grant, contract, or subcontract ***as described in detail in the proposal and approved in writing*** by the funding agreement officer.

(10) During the performance of award, it ***will perform the applicable percentage of work*** unless a deviation from this requirement is approved in writing by the funding agreement officer (check the applicable line and fill in if needed):

- SBIR Phase I: at least two-thirds (66 2/3%)....***
- STTR Phase I and Phase II: at least forty percent (40%)....***
- SBIR Phase II: at least half (50%)....***
- Deviation approved in writing....***

(12) During performance of award, the research/research and development will be ***performed at my facilities with my employees***, except as otherwise indicated in the SBIR/STTR application and approved in the funding agreement.

Yes

No

I am an officer of the business concern authorized to represent it and sign this certification on its behalf. By signing this certification, I am representing on my own behalf, and on behalf of the business concern that the information provided in this certification, the application, and all other information submitted in connection with this application, is true and correct as of the date of submission. I acknowledge that any intentional or negligent misrepresentation of the information contained in this certification may result in criminal, civil or administrative sanctions, including but not limited to: (1) fines, restitution and/or imprisonment under 18 U.S.C. §1001; (2) treble damages and civil penalties under the False Claims Act (31 U.S.C. §3729 *et seq.*); (3) double damages and civil penalties under the Program Fraud Civil Remedies Act (31 U.S.C. §3801 *et seq.*); (4) civil recovery of award funds, (5) suspension and/or debarment from all Federal procurement and nonprocurement transactions (FAR Subpart 9.4 or 2 C.F.R. part 180); and (6) other administrative penalties including termination of SBIR/STTR awards.

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

NSF SBIR AWARD

REQUEST FOR INITIAL PAYMENT

(This Certification and the ACH Vendor/Miscellaneous Payment Enrollment Form (SF 3881) must be returned to the NSF Division of Financial Management (DFM) at 4201 Wilson Blvd., Room 575, Arlington, VA 22230).

NSF Grant No. _____ **Initial Request \$** _____

The grantee, by signing and submitting this Request for Initial Payment for the above referenced NSF Grant, hereby certifies that: (1) the principal investigator and the small business firm have not accepted funding for the same or overlapping work except as stated in the underlying proposal, (2) all proposals describing the same or overlapping work have been withdrawn from other agencies, (3) the primary employment of the principal investigator is with this firm at the time of the award and will continue during the conduct of the research, and (4) the grantee is a small business as defined in the NSF Program Solicitation, "Small Business Innovation Research" under which the grantee submitted its proposal, and the principal investigator is an employee of the firm and is currently available to perform the proposed work. The undersigned understands that willfully making a false statement to or concealing a material fact from NSF is a criminal offense (U.S. Code, Title 18, Section 1001).

This certification must be returned to NSF within 30 days of the date of the award. Failure to do so may result in the cancellation of the award.

You certify
when you report

SBIR/STTR REPORT COVER PAGE (10-17-2012)

NSF Award Number:	Project Title:	
Date:	Period Covered by this Report:	
Company Name:	PI Name:	
Telephone Number:	Email Address:	
Company Address:		
SBIR/ STTR Program Officer:		

Please check as appropriate:

- Phase I Award Interim Report
- Phase I Award Final Report
- Plan to submit Phase II Proposal
- Phase II Award Interim Report
- Phase II Award Final Report

Report contains Proprietary Information

Acknowledgment of NSF support and disclaimer:

"This material is based upon work supported by the National Science Foundation under Award Number: _____. Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the National Science Foundation."

SBIR/STTR Funding Agreement Certification – Life Cycle Certification

All SBIR/STTR Phase I and Phase II awardees must complete this certification at all times set forth in the funding agreement (as specified in the 2012 [Small Business Innovation Research Program Policy Directive](#) and [Small Business Technology Transfer Program Policy Directive](#)). This includes checking all of the boxes and having an authorized officer of the awardee sign and date the certification each time it is requested.

Please read carefully the following certification statements. The Federal government relies on the information to ensure compliance with specific program requirements during the life of the funding agreement. The definitions for the terms used in this certification are set forth in the Small Business Act, the SBIR and STTR Policy Directive, and also any statutory and regulatory provisions referenced in those authorities.

If the NSF Program Officer believes that the business is not meeting certain funding agreement requirements, the agency may request further clarification and supporting documentation in order to assist in the verification of any of the information provided.

Even if correct information has been included in other materials submitted to the Federal government, any action taken with respect to this certification does not affect the Government's right to pursue criminal, civil or administrative remedies for incorrect or incomplete information given in the certification. Each person signing this certification may be prosecuted if they have provided false information.

The undersigned has reviewed, verified and certifies that (one box must be checked for each):

(1) The principal investigator is/was "primarily employed" by the awardee as defined in the solicitation during the term of the funding agreement, or the awardee has requested and received a written deviation from this requirement from the NSF Program Officer.

Yes No Deviation approved in writing by the NSF Program Officer .

(2) All, essentially equivalent work, or a portion of the work performed under this project (check the applicable line):

Has not been submitted for funding by another Federal agency.

Has been submitted for funding by another Federal agency but has not been funded under any other Federal grant, contract, subcontract or other transaction.

A portion has been funded by another grant, contract, or subcontract as described in detail in the proposal and approved in writing by the NSF Program Officer.

(3) The work is completed and awardee has performed the applicable percentage of work, unless a deviation from this requirement is approved in writing by the NSF Program Officer (check the applicable line and fill in if needed):

SBIR Phase I: at least two-thirds (66⅔ %) of the research performed by the awardee.

SBIR Phase II: at least half (50%) of the research by the awardee.

STTR Phase I and Phase II: at least 40% of the research performed by the awardee and at least 30% performed by the non-profit research institution

Deviation approved in writing by the NSF Program Officer.

Not applicable because the work has not been completed at this time

(4) The work for which payment is hereby requested was performed in accordance with the award terms and conditions and that payment is due and has not been previously requested.

Yes No payment requested A deviation in payment has been approved in writing by the NSF Program Officer.

(5) All of the funds committed to this award, including all associated supplemental awards, have been fully expended as designated in the grant budget.

Yes

No (Please provide a detailed explanation in the report)

Not applicable because the work has not been completed at this time.

(6) The research/research and development is/was performed in the United States unless a deviation is approved in writing by the NSF Program Officer.

Yes No Waiver has been granted.

(7) The research/research and development is/was performed at the awardee's facilities described in the proposal by the awardee's employees, except as otherwise indicated in the SBIR application and approved in the funding agreement.

Yes No

(8) I will notify NSF immediately if all or a portion of the work proposed is subsequently funded by another Federal agency.

(9) I understand that the information submitted may be given to Federal, State and local agencies for determining violations of law and other purposes.

I certify that to the best of my knowledge (1) the statements herein (excluding scientific hypotheses and scientific opinions) are true and complete, and (2) the text and graphics in this report as well as any accompanying publications or other documents, unless otherwise indicated, are the original work of the signatories or individuals working under their supervision. I understand that the willful provision of false information or concealing a material fact in this report or any other communication submitted to NSF is a criminal offense (U.S. Code, Title 18, Section 1001).

Authorized Company Officer Name: _____

Title: _____

Signature: _____ Date: _____

PI Name : _____

P.I. Signature: _____ Date: _____

What will happen
to you if you
lie or steal?

Criminal Liability

- 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
 - Before trial, government can seize assets (bank accounts, cars, house); after trial, it can keep them if you don't have enough money to pay restitution

- Using SBIR grant funds for 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, or fabricating 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)
 - Falsification of Records Involving Federal Investigations, 18 USC §1519

Civil Liability

□ 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

Administrative Action By NSF

Administrative Action

=

Nix current awards

+

No more federal money

- Suspension followed by 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

3

True Stories

“Amar
Transportation
Research &
Consulting, Inc.”

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

“M.L. Energia, Inc.”