



**DOE OIG Office of Investigations
SBIR/STTR Fraud Awareness
Commonalities and Consequences**

October 29, 2019

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Fraud Defined

- ***What is Fraud?***

- Although it can take many forms, Fraud, at its core, is deception through the misrepresentation or omission of material facts for the purpose of illegitimate gain.

To be clear, Fraud within the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs is a premeditated act with the intent to deceive.

The Office of Inspector General (OIG) does not prosecute innocent mistakes.

The purpose of this presentation is to educate the applicant and highlight commonalities with SBIR/STTR Fraud, and show as an investigator what the OIG looks for in support of criminal or administrative investigations.



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Combating Fraud

- ***What types of fraud are found in the SBIR/STTR Program?***
- During the Application Process:
 - Submitting a plagiarized proposal.
 - Duplicate proposals/awards involving the same or multiple agencies for same work.
 - Sham websites or e-mails.
 - Geographical improbabilities. i.e.: Apartments, PO Boxes, residential addresses or facilities shared with other companies. Is the company physically capable of providing the required product?
 - Providing false information regarding the company, the Principal Investigator or work to be performed. Can the company actually support what they say they can?



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Combating Fraud

- ***What types of fraud are found in the SBIR/STTR Program?***
- During the Application Process (cont.):
 - Seeking funding for work that has already been completed.
 - Accepting federal funding on more than one SBIR/STTR grant for essentially equivalent work.
i.e.: “Duplicative funding”
 - Unauthorized use of facilities, i.e.: Unauthorized use of university laboratories, lack of an actual company facility or a U.S. presence is front for overseas operations.
 - Fraud in inducement of awards, i.e.: Fake investments, falsified letters of support or the company organizational chart reflects individuals who are not employees.



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Combating Fraud

- ***What types of fraud are found in the SBIR/STTR Program?***
- During the Award:
 - Using award funds for personal use or for any use other than the proposed activities. i.e.: Using SBIR/STTR funds to support ongoing business operations instead of the proposed research.
 - Submitting plagiarized reports or reports falsely claiming work has been completed.
 - Claiming results for an award that were funded by a different source.
 - Exploiting a perceived lack of communication and transparency between agencies by submitting duplicate or overlapping proposals to various agencies.



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Knowing the Rules

- ***Which SBIR rules should you be particularly familiar with?***
 - Duplicate or overlapping proposals may not be submitted to multiple agencies without full disclosure to all agencies.
 - Company must meet the Small Business Association's requirements for a small businesses, including being majority American owned and have 500 employees or less.
 - The Principal Investigator's primary employment must be with the company during the grant period. The Principal Investigator may not be employed full time elsewhere.



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Knowing the Rules

- ***Which SBIR rules should you be particularly familiar with (cont.)?***
 - For Phase I, a minimum of two thirds of the research effort must be performed by the grantee company; for Phase II, a minimum of one-half of the research effort must be performed by the grantee company. Work performed by a university research lab is NOT work completed by the grantee company.
 - University employees participating on an SBIR/STTR award should disclose their involvement to the university as well as their use of university facilities.
 - Research and Development must be performed in the United States.



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Consequences

- ***What Happens If You Break the Rules?***

- *Overview.*

- If you commit Fraud or other wrongdoing in applying for or carrying out an SBIR award, the OIG will investigate.
 - Violations of civil or criminal law are referred to the Department of Justice. If the Department of Justice prosecutes you for Fraud or False Statements, you may be sentenced to prison and required to pay full restitution. If the Department of Justice pursues a civil action under the False Claims Act, you may have to pay treble damages and \$11,000 for each false claim. In addition, the Department of Energy may terminate your awards and debar you from receiving grants or contracts from any federal agency.



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Consequences

- ***What Happens If You Break the Rules (cont.)?***

- Criminal Prosecution.
- Civil Liability.
- Administrative Remedies.

Criminal forfeiture = full amount of grant/contract; personal assets can be seized to satisfy forfeiture or fine.



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Consequences

- ***Criminal Prosecution.***

Lying to obtain an SBIR/STTR grant or lying about the work performed violates several criminal laws:

- False Statements (punishable to 5 years in prison, forfeiture and \$250,000 fine).
- Theft of Federal Property (punishable to 10 years in prison, forfeiture and \$250,000 fine).
- Wire Fraud (punishable to 20 years in prison, forfeiture and \$250,000 fine).
- False Claims (punishable by \$250,000 fine for individuals and \$500,000 fine for corporations).

Criminal forfeiture = full amount of grant/contract; personal assets can be seized to satisfy forfeiture or fine



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Consequences

- ***Civil Liability.***
 - May be imposed in addition to criminal prosecution.
 - 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 grant 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.



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Consequences

- ***Administrative Remedies.***

- Government can terminate contracts tainted by fraud.
- Government can debar the small business owner and/or employees. Debarment is typically for three years, but can be for a longer period.
- Prohibition from receiving any federal contracts or working as a subcontractor on federal contracts.
- Program Fraud Civil Remedies Act subjects anyone who knowingly makes or submits a false claim or statement to a civil penalty of not more than \$7,000 for each false claim or statement as well as twice the amount of any payments made by the Department.



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Consequences

- ***Administrative Remedies (cont.)***

- The Government retains the right to examine the status of an SBIR grant at any time.
- Status checks include:
 - Site visits.
 - Requests for records including financial documents and timesheets.
 - Good record keeping will help eliminate suspicion and ensure successful status checks.

Administrative remedies are in addition to criminal and civil liability.



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Recent Settlement

- **Delaware**

On December 27, 2018, the U.S. Department of Justice (DOJ) entered into a \$2.75 million settlement agreement with EM Photonics (EMP) and its Chief Executive Officer Eric Kelmelis. Of that amount, \$1.18 million will be paid in restitution to DOE, the U.S. Navy; Air Force and NASA; DOE will be reimbursed approximately \$124,000.

The investigation determined EMP received millions of dollars in Government contracts through the SBIR and STTR programs. The evidence demonstrated that EMP and Kelmelis engaged in two different billing schemes under SBIR/STTR, including: (1) that EMP/Kelmelis directed EMP employees to falsely complete timesheets for direct labor that the employees did not perform and to submit false invoices and public vouchers to the funding agencies for direct labor that was not performed on these awards; and, (2) that EMP/Kelmelis received SBIR/STTR funding for essentially equivalent work already performed and funded by another Government agency and falsely certified such work was, in fact, non-duplicative.



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Recent Prosecution

- **Tampa, Florida**

U.S. District Judge Virginia Hernandez Covington has sentenced Mahmoud Aldissi (a/k/a Matt) and Anastassia Bogomolova (a/k/a Anastasia) for conspiracy to commit wire fraud, wire fraud, aggravated identity theft, and falsification of records. Aldissi was sentenced to 15 years in federal prison and Bogomolova was sentenced to a term of 13 years. As part of their sentences, the court entered a money judgment in the amount of \$10.6 million, representing the proceeds of the crime, and ordered them to pay \$10.6 million in restitution. Aldissi and Bogomolova were found guilty on March 20, 2015.

According to testimony and evidence presented during the month-long trial, through their two companies, Fractal Systems, Inc., and Smart Polymers Research Corp., Aldissi and Bogomolova fraudulently obtained approximately \$10.5 million of small business research awards from the federal government. In order to be awarded contracts, they submitted proposals using the stolen identities of real people to create false endorsements of and for their proposed contracts. In the proposals, they also lied about their facilities, costs, the principal investigator on some of the contracts, and certifications in the proposals.



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Reporting Fraud

- The OIG promotes the effective, efficient and economical operation of the Department of Energy's programs and operations through audits, inspections, investigations and other reviews.
- Within the OIG, the Office of Investigations is responsible for investigating any fraudulent acts involving the Department, its contractors or subcontractors, or any crime affecting the programs, operations, Government funds, or employees of those entities.
- ***If you want additional information or to report wrongdoing:***
 - Internet:** ig.energy.gov
 - E-mail:** ighotline@hq.doe.gov
 - Telephone:** 202-586-4073
 - Hotline:** 800-541-1625
 - Fax:** 202-586-4902

