

# TUTORIAL #36

## What are the consequences of committing fraud in the SBIR/STTR programs?

You might be wondering, what happens if a company breaks the rules? If a small business commits fraud or other wrongdoing in applying for or carrying out an SBIR/STTR award, the Office of Inspector General will investigate. Violations of civil or criminal law are referred to the United States Department of Justice. If the Department of Justice prosecutes a company for fraud or false statements, the small business owner 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, the violating company may have to pay treble damages or a multiple of, and not an addition to, actual damages, including \$11,000 for each false claim. In addition, the Department of Energy may terminate those awards and debar a company from receiving grants or contracts from any Federal agency in the future. Additional penalties may include:

- » Criminal Prosecution
- » Civil Liability
- » Administrative Remedies, and
- » Criminal forfeiture equal to the full amount of grant/contract. Personal assets also can be seized to satisfy forfeiture or fines.

Let's explore each of these in more detail.

### Criminal Prosecution

Lying to obtain an SBIR/STTR grant or lying about the work performed violates several criminal laws. First of which is False Statements, which are punishable up to 5 years in prison, forfeiture and a \$250,000 fine. Another is Theft of Federal Property, which is punishable up to 10 years in

prison, forfeiture and a \$250,000 fine. The next is Wire Fraud, which is punishable up to 20 years in prison, forfeiture and a \$250,000 fine. Lastly, lying to obtain an SBIR/STTR grant violates the False Claims law, which carries a \$250,000 fine for individuals and a \$500,000 fine for companies. There have been several instances where companies were found guilty of defrauding the government through the SBIR/STTR program. In addition to hefty fines in the millions of dollars, the perpetrators were also sentenced to prison terms up to 15 years.

### Civil Liability

Moving ahead to Civil Liability, which may be imposed in addition to criminal prosecution, this can include treble damages, which are up to three times the actual damages, and include 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 an award for reporting fraud via the qui tam provision of False Claims Act. They may remain anonymous or request their identity remain confidential. This keeps the door open for the Office of Inspector General to contact whistleblowers should they need any follow up information. Remaining anonymous limits the Inspector General’s ability to do this.

### Administrative Remedies

Administrative remedies refer to what the government can do while terminating awards tainted by fraud and are in addition to criminal and civil liability. The government can debar the small business owner and/or its employees. Debarment is typically for three years, but can be for a longer period of time. The company in violation may also be prohibited from receiving any federal contracts or working as a subcontractor on federal contracts.

The 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 funding agency.

In addition, the Government retains the right to examine the status of an SBIR/STTR grant at any time. Status checks may include site visits or requests for records including financial documents and timesheets. Good record keeping will help eliminate suspicion and ensure successful status checks.

As with any crime, if found guilty, companies can expect the media to widely report on the crime, as well as print the names of the perpetrators along with the company name and information.

If you wish to obtain additional information or to report wrongdoing to the United States Department of Energy, you may contact the Office of Inspector General using the following information:

- › Internet: [www.ig.energy.gov](http://www.ig.energy.gov)
- › E-mail: [ighotline@hq.doe.gov](mailto:ighotline@hq.doe.gov)
- › Telephone: 202-586-4073
- › Hotline: 800-541-1625
- › Fax: 202-586-5697