

# DOE FY 2024 SBIR/STTR Phase I Release 2 Awardee Webinar

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October 22, 2024

# Agenda

- 1:30 – 1:35 p.m. Introduction, Manny Oliver
- 1:35 – 2:10 p.m. Patent, Data Rights and Responsibilities under SBIR/STTR Awards, Mike Dobbs
- 2:10 – 2:50 p.m. Proper Administration of DOE SBIR/STTR Grants, Mark Sojka
- 2:50 – 3:15 p.m. Preventing Fraud in the SBIR/STTR Programs, Office of Inspector General, Adam Lorenzen

# Who do I contact with questions?

- Questions about your award, personnel or budget changes?
  - Contact your grants specialist (Chicago Office)
- Questions about changes to the technical direction of your project?
  - Contact your DOE program manager
- Not sure who to ask? Or don't know who your DOE program manager and grants specialist are?
  - Contact the Office SBIR/STTR programs, [sbir-sttr@science.doe.gov](mailto:sbir-sttr@science.doe.gov) , (301) 903-5707

# Recent Program Changes: FY 2022-2024

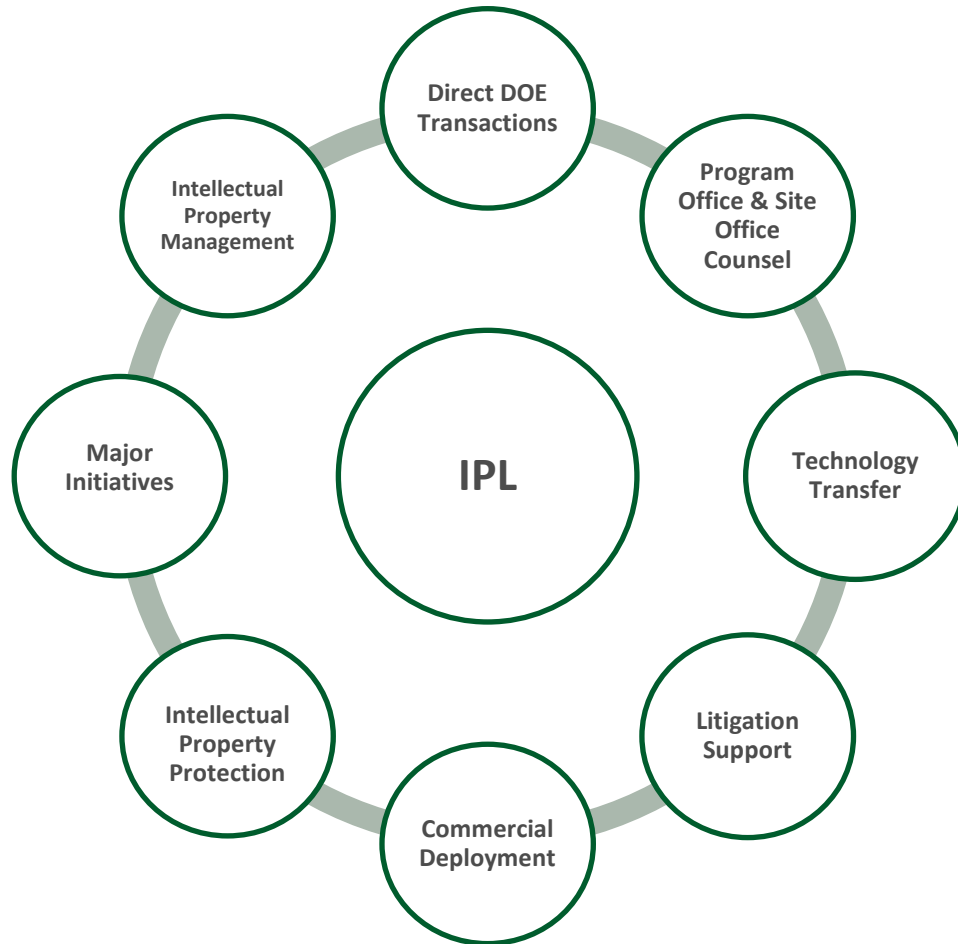
- U.S. Manufacturing Requirement
  - Technologies invented under SBIR/STTR awards must be substantially manufactured in the U.S.
- Disclosure of Foreign Relationships
  - Must be included with your application and updated during the award period
- DOE Approval for Unnamed Key Personnel in your Application
  - Seek approval at least 30 days in advance of having unnamed key personnel start on the project

# New Requirement for FY 2024

- Cybersecurity Self-Assessment
  - Phase II applicants are required to submit a cybersecurity self-assessment.
  - A webinar was held in September to explain the requirements and provide guidance on implementing best practices
  - For more information: <https://science.osti.gov/sbir/Foreign-Risk-Management/Cybersecurity-Due-Diligence-Program>

# Take Advantage of . . .

- Supercomputer Resources  
<https://science.osti.gov/sbir/Applicant-Resources/National-Labs-Profiles-and-Contacts/National-Energy-Research-Scientific-Computing-Center>
  - Computing time available at no charge to DOE SBIR/STTR awardees
- Partnering Resources: <https://science.osti.gov/sbir/Partnering-Resources>



# Intellectual Property Law (IPL)

Moving Science Forward

## Patent & Data Rights and Responsibilities under SBIR/STTR Awards

October 22, 2024

Michael J. Dobbs  
Deputy Chief Counsel -- Intellectual Property Law (IPL)  
U.S. Department of Energy  
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# Disclaimers – Consult your Attorney and [Award Terms](#)



**Legal Representation:** This presentation includes information about legal issues and legal developments for informational purposes only. These informational materials are not intended, and should not be taken, as legal advice on any set of facts or circumstances. You should contact an attorney for advice on specific legal problems.

Review your award terms, the [SBA's Policy Directive](#) and the applicable laws and regulations with your legal counsel!



**Personal Views and Opinions:** The views and opinions expressed in this presentation are those of the author and do not necessarily reflect the official policy or position of any agency of the U.S. Government.



# Key Takeaways

1

Properly mark your reports (SBIR/STTR markings only).

2

Timely report **all Subject Inventions** through iEdison (not just patents)

3

Watch statutory bars (publications, on-sale, and public use) and inform both your attorney and iEdison ASAP.

4

Watch U.S. Manufacturing requirements and consult DOE early with questions.

# Data Rights v. Patent Rights

	Data Rights	Invention Rights
<b>Intellectual Property</b>	<b>Copyright</b>	<b>Patent</b> Must provide enabling disclosure to USPTO and be issued a patent!
<b>Subject Matter</b>	“original works of authorship fixed in any tangible medium of expression” 17 USC 102	“new and useful <u>process</u> , machine, manufacture, or composition of matter, or any new and useful improvement thereof” 35 USC 101
<b>Disclosure to Government</b>	Deliverables identified in the award. Typically, no deliverables after closeout.	All Subject Inventions and filed patents (Conceived or First Reduced to Practice) – Ongoing Obligation
<b>Government Protection From Disclosure</b>	Limited Rights, Restricted Computer Software, SBIR/STTR Data Rights	35 USC 205 - Confidentiality

- Export Control, Security Classification and other restrictions may also be applicable.
- \*\*Provided for discussion purposes only.

# SBIR/STTR Data Rights GTC-0025 -- Overview



**“Data”** -- All recorded information, regardless of the form or method of recording. Not just experimental data. Typically, only certain data is reported to the agency (e.g. Final Report or other deliverables).



**Marked Privately Funded Data**  
(Proprietary, Limited, and  
Restricted Computer Software)

**Technical Proposal(FOA):** Typically, may include in proposal; consult FOA.

**Progress or Final Reports:** *Not authorized*, unless otherwise directed by the Contracting Officer.

## “Unlimited Rights” to Government.

- Default rights to Government (all unmarked data).
- No obligation to protect.
- Automated Publication of the Final Technical Report.

## Marked SBIR/STTR Data (Statutory)

- Data generated in the performance of an SBIR/STTR Award
- Properly marked as SBIR/STTR Data per award terms.
- Government will protect marked SBIR/STTR data from release outside the Government and Government Support Contractors for a limited period.
  - 20-years from award issuance fixed protection period (awards issued on or after May 2019).



Use the “20 YEAR SBIR/STTR DATA RIGHTS (2019)” legend. On the first page or cover page of the document containing SBIR/STTR Data. Subsequent pages shall also include the authorized legend or simply “SBIR/STTR Protected Data”.

May identify only portions of a page as SBIR/STTR Data (e.g., by circling or underscoring with a note or other appropriate identifier).

**Do NOT mark reports with “Proprietary”, “Limited Data”, “Restricted Computer Software” or the corresponding markings found in the FOA!**



Identify as “20 YEAR SBIR/STTR DATA RIGHTS (2019)” in all submissions to Office of Scientific and Technical Information (OSTI).

# 20 Year SBIR/STTR Data Rights (2019)

Funding Agreement No \_\_\_\_\_ (e.g. DE-SC000nnnn)

Award Date \_\_\_\_\_ (*Block 27 on the Assistance Agreement*)

SBIR/STTR Protection Period: *Twenty years from Award Date*

SBIR/STTR Awardee \_\_\_\_\_

This report contains SBIR/STTR Data to which the Federal Government has received SBIR/STTR Technical Data Rights or SBIR/STTR Computer Software Rights during the SBIR/STTR Protection Period and Unlimited Rights afterwards, as defined in the Funding Agreement. Any reproductions of SBIR/STTR Data must include this legend.

***\*No other protective legends should be used!***

# OSTI Submission -- [www.osti.gov/elink/](http://www.osti.gov/elink/)

- 3. Authors
- 4. Content
- 5. Related Documents
- 6. Contact Info
- 7. Upload/Link
- 8. Certifications
- 9. Summary

**\* DOE Award/Contract Number ?**  
DE-

**Other Identifying Numbers ?**

**Award DOIs ?**  
(Click on a row below to Edit or Delete Award DOIs)

DOI	Funder
No data available in table	

Showing 0 to 0 of 0 entries

**\* Recipient/Contractor (Organization) ?**

**\* STI Product Type ?**

**\* STI Sub Type**  
 SBIR  STTR

**\* SBIR/STTR Phase**  
 I  II  IIA  IIB  III

**\* Intellectual Property/Distribution Limitations ?**

# Final Report Certifications

- I represent and warrant that the technical report being submitted does **NOT** contain any of the following:
  - Personally Identifiable Information (PII), limited rights data, classified information, information subject to export control classification, or other information not subject to public release.
- Submissions must not contain any “Proprietary”, “Confidential” or “Business Sensitive” markings or similar restrictive markings not authorized by the applicable government agreement; I acknowledge that DOE has the right to cancel or ignore such markings.



# Other Legends



“©” -- If including Copyrighted Notice, must include

This work was generated with financial support from the U.S. Government through Contract/Award No. \_\_\_\_\_, and as such the U.S. Government retains a paid-up, nonexclusive, irrevocable, world-wide license to reproduce, prepare derivative works, distribute copies to the public, and display publicly, by or on behalf of the Government, this work in whole or in part, or otherwise use the work for Federal purposes.



Third party copyrighted material

Must remove from final technical report.



Data generated with private funding (Limited Rights Data, Restricted Rights Data), **Export Control** or **Classified** information should not be submitted through OSTI and should not be on the report.

Please contact Contracting Officer.  
Do not email classified information.



Data markings when disclosing to others

Consult your attorney (e.g. NDA, confidential data markings, patent, copyright, trade secret, protection).

# Key Takeaways

1

Properly mark your reports (SBIR/STTR markings only).

2

Timely Report **all subject inventions** through iEdison (not just patents)

3

Watch Statutory bars (publications, on-sale, and public use) and inform both your attorney and iEdison ASAP.

4

Watch U.S. Manufacturing requirements and consult DOE early with questions.

# Patent Rights GTC-0024 – 35 USC 202 (Bayh-Dole Act)

Statutory language (Bayh-Dole Act - 35 USC 202 et seq.)

- Uses published terms at from 37 CFR 401.14.
- Modified to require substantial U.S. manufacture in the U.S.
- See Key Takeaway #4

Allows small businesses and non-profit entities to retain title to timely reported subject inventions

- When issuing subcontracts, must grant non-profit and small business entities rights to their inventions. Non-profit and small business may grant invention right (e.g. patent assignments, licensing etc.), but not as a consideration for awarding a subcontract.
- DOE Patent Counsel should be consult for subcontracts to entities other than small business and non-profit entities.
- Subject to certain Government Rights (e.g. Government License, March-In, U.S. Manufacturing).

Government may take title to inventions

- Unelected inventions/patents.
- Late actions (e.g. reporting, title election, filing).
- Unreported inventions.
- Failure to substantially manufacture a subject invention in the U.S. without a waiver.

# Invention Reporting (iEdison)



“Invention” means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code...



“Subject invention” means any invention of the Recipient **conceived or first actually reduced to practice in the performance of work** under this award (*GTC 0024 (a)*).



Must implement written agreement with employees to report inventions (*GTC 0024 (f)*) .

# Invention Reporting (iEdison)

## Invention Report

Disclose in iEdison within two months after the inventor discloses it in writing (GTC 0024 (c)(1)).

- Report the invention even if you do not intend to pursue patent protection!
- Leverage your existing invention management process.
- Create an iEdison account now.
- Must report subject inventions at any time, even after closeout.
- Must disclose and elect 60 days before any Statutory Bars (GTC 0024 (c)(2)), including any publication, on sale or public use of the invention.
- Invention Disclosures are protected under 35 U.S. Code § 205 – Confidentiality, NOT as SBIR/STTR Data
- Notify DOE of the acceptance of any publication, on sale or public use.

## Election Decision

Make an election decision in iEdison within 2 years

- Elect the inventions you wish to retain and pursue patent application on.
- A patent application must be filed on elected patent applications within 1 year.
- Annual utilization reports are required for elected inventions.
- Non-elect inventions you will not pursue patent protection on.
- DOE will evaluate.

## Patent Application Filing

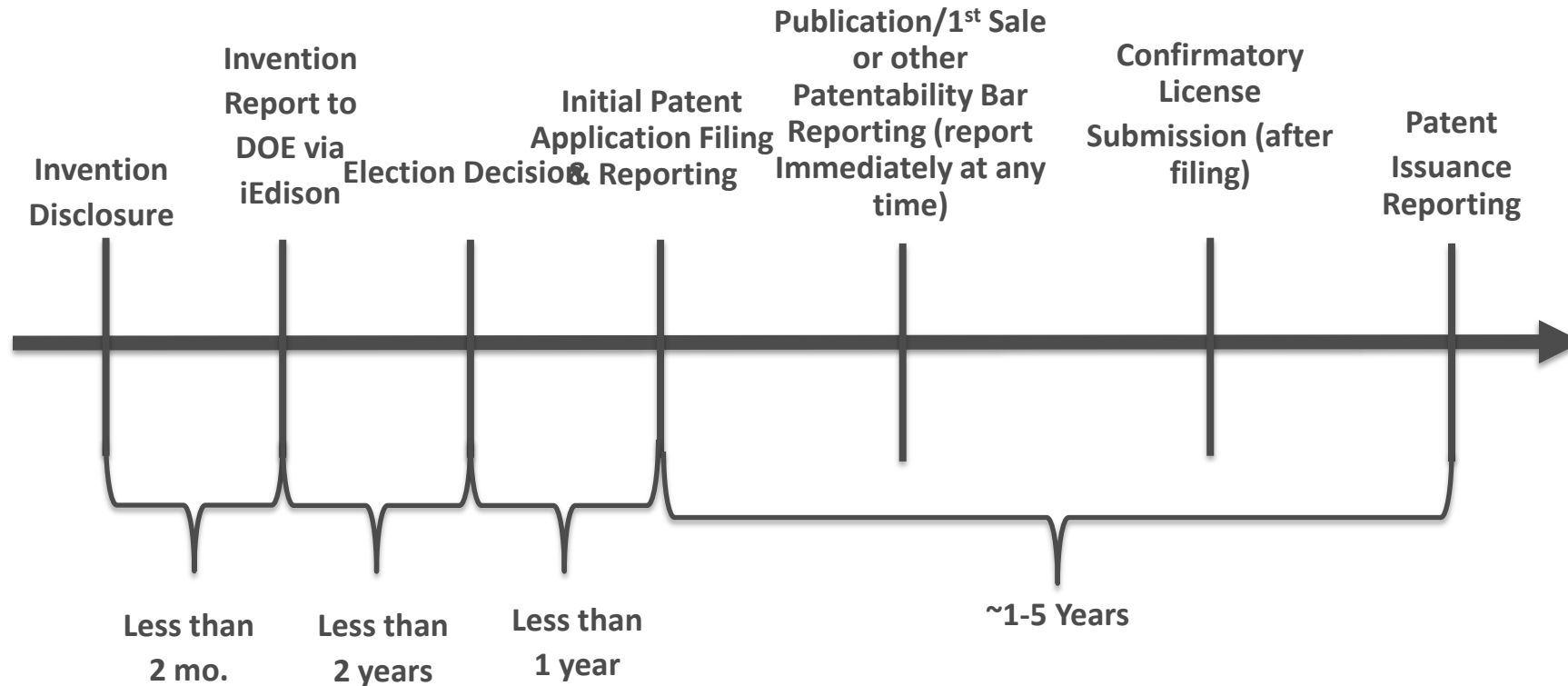
Report Patent Filings in iEdison

- Include the Government Support Clause in the patent application
- Provide a Confirmatory License

# iEdison Contacts

- [www.nist.gov/iedison](http://www.nist.gov/iedison)
- For system issues with iEdison, please contact: [iedison@nist.gov](mailto:iedison@nist.gov)
- DOE invention reporting support, please contact:
  - Maritza Rodriguez  
iEdison Lead  
[Maritza.Rodriguez@science.doe.gov](mailto:Maritza.Rodriguez@science.doe.gov)  
Phone : (630) 283-7117

# Invention Reporting Timeline



- *\*DOE may extend any due dates (including invention reporting) with substantive justification.*
- *\*\* DOE may pursue patent protection on unreported, unelected, or abandoned inventions.*

# Patent Filing



File an “Initial Patent Application” within a year of election

Defined to include, both provisional and non-provisional patent applications, as well as PCT applications. See 37 CFR 401.2(n).



Provide DOE with a copy of each application and filing information.

*GTC 0024 and award checklist*



Provide DOE with a [confirmatory license](#)

*GTC 0024 (f)(1)*

*Report in iEdison using the generated iEdison confirmatory license.*



Notify DOE of any decision to discontinue prosecution of any patent application.

*GTC 0024 (f)(3)*

*Report in iEdison*



Include a Government Interest Clause in Application.

*GTC 0024 (f)(4)*

*“This invention was made with Government support under (identify the award) awarded by (identify DOE). The Government has certain rights in this invention.”*



**\*\*USPTO does provide micro and small entity discounts \*\***



# Patent Prosecution Cost Allowability

- Technical and Business Assistance (TABAs) funds (\$6,500 Phase I; \$50,000 Phase II) may be authorized for patent prosecution costs related to obtaining U.S. patent protection for **Subject Inventions** of this award.
  - Includes attorney fees and USPTO fees.
  - Includes filings with the USPTO related to provisional, PCT, non-provisional, continuation, and continuation-in-part patent applications.
  - Excludes patent prosecution costs related to foreign patent protection (e.g. foreign attorney, foreign patent office or translation fees).
  - Unlikely to have a subject invention created and filed during the Phase I award.
  - Need to include patent costs in commercialization assistance budget.
- Other Intellectual Property/Commercialization Costs may be allowable
  - Freedom to operate, market analysis, searching costs may be allowable.
  - Intellectual property licenses are typically not allowable as they are not a required cost in performance of the award. Check for Government Licenses.

# Closeout - Invention Certification

- Invention Certification
  - Certify all inventions, patent applications, and patents are reported by DOE S-number or iEdison Invention Number.
    - If you do not have an S-number or iEdison number, was the invention reported?
  - Certified inventions should match list of inventions reported in iEdison.
  - Need certification from subawards.
    - Prime may certify or obtain separate certification from each subcontractor.

DOE F 2050.11  
(10/17)  
(All Other Editions Are Obsolete)



OMB Control No. 1910-0800  
Expiration Date: 10/31/2021

## Department of Energy

### Invention Certification For Federal Award

**Prime Contractor Name:**

**Prime Contract Number:**

**Task Order Number:** Not Applicable

**Certifying Entity Type:** Certification by Prime Contractor

**Certification Type:** Final Certification

This certification is the final and complete patent certification submitted by the undersigned and covers all subject inventions developed or first reduced to practice in the performance of the above identified task order, subcontract or contract, except for any subcontracts listed below as not being included in this certification.

Contractor hereby certifies that all subject inventions have been identified and disclosed as required by the patent clause of the applicable subcontract or contract.

**Subcontractor(s):** Subcontractor(s) used to perform experimental, developmental or research work

**Research and Development Subcontractor:**

Subcontractor Name:

Subcontract Number:

Invention Certification Included in this certification

**Listing of Subject Invention(s):** Listed Below

**Subject Invention:**

DOE S-Number or iEdison Invention Report Number/EIR Number:

Corresponding Patent/Application Number(s):

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## Statutory Bars (35 USC 102(a))



Patented



Described in a printed publication, or



in public use, on sale, or otherwise available to the public

# Statutory Bars

- U.S. has one year “grace period” (35 USC 102(b)). Most other countries do not.
- Invention disclosure must **identify any publication, on sale or public use** of the invention (*GTC 0024 (c)(1)*). Will shorten election period.
- Myths (Discuss with your Patent Counsel)
  - As long as you file within a year, you won’t lose patents rights after publishing.
    - Potential loss of both foreign and domestic patent rights.
  - Publish or perish!
    - False Dichotomy.
    - Patent, Publish and Profit!

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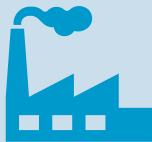
Watch U.S. Manufacturing requirements and consult DOE early with questions.

# U.S. Competitiveness



Consult FOA, Award Terms and DOE Guidance

[U.S. Manufacturing | Department of Energy](#)  
[Frequently Asked Questions \(FAQs\) | Department of Energy](#)



Requires substantial U.S. Manufacture of Subject Inventions

For products embodying or produced through a subject invention (e.g. methods or manufacturing apparatus)

Additional requirement from U.S. Preference (35 U.S.C. 204)



DOE will accept and consider all applications for a clarifications, waiver or modification with business justification

DOE recognizes the need for flexibility and expects to modify the U.S. Competitiveness Provision in certain situations. DOE may grant waiver or modification requests. At this time, petitions for a waiver or modification of U.S. manufacturing requirements should be sent to GC-62@hq.doe.gov.

# U.S. Competitiveness (SBIR/STTR Feb. 2022)

- SBIR/STTR-GTC-0024 PATENT RIGHTS (m) U.S. Competitiveness
- (1) The Recipient agrees that any products embodying any subject invention or produced through the use of any subject invention will be **manufactured substantially in the United States** unless the Recipient can show to the satisfaction of DOE that it is not commercially feasible. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., alternative binding commitments to provide an overall net benefit to the U.S. economy. The Recipient agrees that it will not license, assign or otherwise transfer any subject invention to any entity, at any tier, unless that entity agrees to these same requirements. (2) In the event that the Recipient or other such entity receiving rights in the Subject Invention undergoes a change in ownership amounting to a controlling interest, the Recipient or other such entity receiving rights shall ensure continual compliance with the requirements of this paragraph (m) and shall inform DOE, in writing, of the change in ownership within 6 months of the change. (3) The Recipient and any successor assignee will convey to DOE, upon written request from DOE, title to any subject invention, upon a breach of this paragraph (m). The Recipient will include this paragraph (m) in all subawards/contracts, regardless of tier, for experimental, developmental or research work.
-



# Key Takeaways

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# Work Well with Others



Follow award terms for all subcontracts

Incorporate Patent Rights GTC-0024 in all R&D subcontracts(except DOE Laboratories)!



Consider working with a DOE Laboratory.

DOE Approved, streamlined SPP or User agreements.

DOE User facility non-proprietary (DOE funded) or proprietary (privately funded).



Phase III Awards

“The scope and extent of the SBIR/STTR Data Rights applicable to Federally-funded Phase III awards are identical to the SBIR/STTR Data Rights applicable to Phases I and II SBIR/STTR awards.” SBA Policy Directive pg. 102

Look for DOE’s Phase III Guidance

# Technology Transfer Mechanisms at DOE Facilities



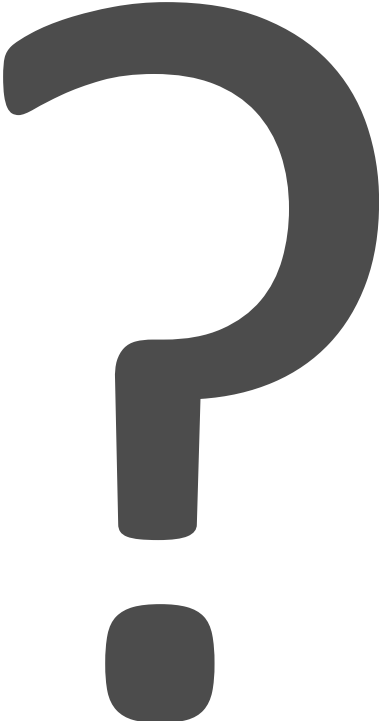
Agreement	Use	Funding	Subject Inventions	Generated Data	U.S. Competitiveness	Cost	Highlights
Cooperative Research and Development Agreement (CRADA)	Collaborative research between DOE Labs and public and/or private entities for the mutual benefit of the parties	Private and/or Federal funds	Lab and Participant may elect their own inventions and Participant has right to negotiate exclusive license to Lab inventions	Protected for up to 5 years	Products embodying IP resulting from CRADA shall be manufactured substantially in the U.S.	Lab and Participant may share costs or Participant pays 100% funds-in	<ul style="list-style-type: none"> <li>✓ Collaborative research</li> <li>✓ 5 year data protection</li> <li>✓ Designed for multi-party collaborative research</li> </ul>
Strategic Partnership Project (SPP)	Work for businesses and other non-federal entities using highly specialized or unique DOE facilities, services or technical expertise	Private funds	Sponsor may elect title to Subject Inventions <sup>1</sup>	Protected as Sponsor's proprietary data w/limited exceptions <sup>1,2,3</sup>	U.S. Preference: Sponsor agrees not to grant any party exclusive right to use or sell products embodying Subject Inventions in the U.S. unless products are manufactured substantially in the U.S.	Sponsor pays full cost recovery	<ul style="list-style-type: none"> <li>✓ Sponsor typically retains right to elect title to subject inventions</li> <li>✓ Generated data treated as proprietary</li> <li>✓ Option for limited Gov. R&amp;D license<sup>3</sup></li> </ul>
		Federal funds	Lab may elect title to Subject Inventions of the Lab	Unlimited Gov. rights or flow down of SBIR/STTR Data	U.S. Preference (see above)	Sponsor pays full cost recovery	<ul style="list-style-type: none"> <li>✓ Access to unique facilities and expertise using federal funds</li> <li>✓ <b>Streamlined SBIR/STTR Preapproved Model may be available</b></li> </ul>
Agreements for Commercializing Technology (ACT)	Work for businesses and other non-federal entities using highly specialized or unique DOE facilities, services or technical expertise	Private funds	Initial title to the designated IP Lead. (ACT Participant or Lab Contractor)	Protected as proprietary data w/limited exceptions <sup>1,2,3</sup>	U.S. Preference (see above)	Participant pays full cost recovery <u>plus</u> additional negotiated compensation to the Contractor	<ul style="list-style-type: none"> <li>✓ Flexibility for addressing indemnity &amp; adv. payment</li> <li>✓ Negotiable IP terms</li> <li>✓ Optional performance guarantee</li> <li>✓ Option for limited Gov. R&amp;D license<sup>3</sup></li> </ul>
Proprietary User Agreement <sup>4</sup>	User may access designated facilities to conduct its own proprietary research	Private funds	User may elect title to its Subject Inventions	User may protect as proprietary	n/a	User pays approved user rate	<ul style="list-style-type: none"> <li>✓ Generated data treated as proprietary</li> <li>✓ Merit based access to unique facilities</li> </ul>
Non-Proprietary User Agreement <sup>4</sup>	Non-proprietary research at designated facilities	n/a	Lab and User may elect their own Subject Inventions	Unlimited Gov. Rights	U.S. Preference (see above)	Each party covers own cost	<ul style="list-style-type: none"> <li>✓ Merit based access to unique facilities</li> <li>✓ Agree to publish results.</li> </ul>

<sup>1</sup> Certain exceptions or restrictions may apply (e.g. foreign SPP Sponsors may be granted the right to elect title to inventions and receive proprietary data protection but only after the approval of DOE field patent counsel and concurrence from the cognizant DOE program office).<sup>2</sup> Proprietary data protection may not be available at all facilities. <sup>3</sup> If the limited Gov. R&D license is utilized, data protection will be limited to 5 years. <sup>4</sup> User Agreements are only available when the Sponsor/Participant/User is proposing to use a DOE Designated User Facility that offers such agreements. (see, <http://technologytransfer.energy.gov/docs/designateduserfacilities.html>)



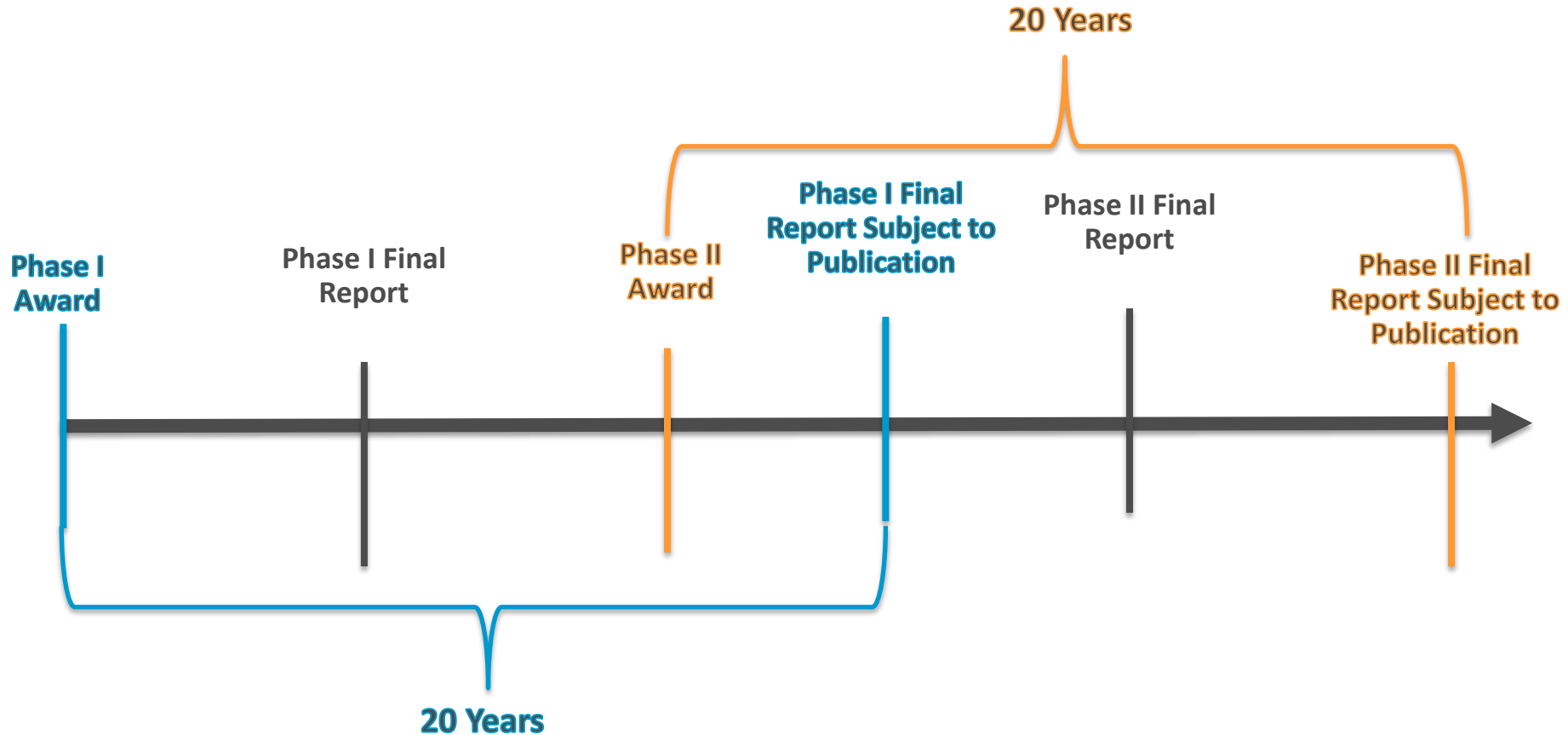
# Questions?

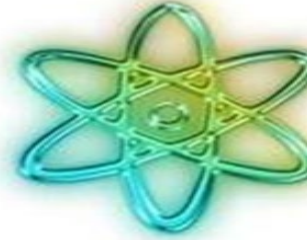
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# 20 Year SBIR/STTR Data Rights (2019)

- Fixed 20-year data protection from award date (Block 27 on the Assistance Agreement).

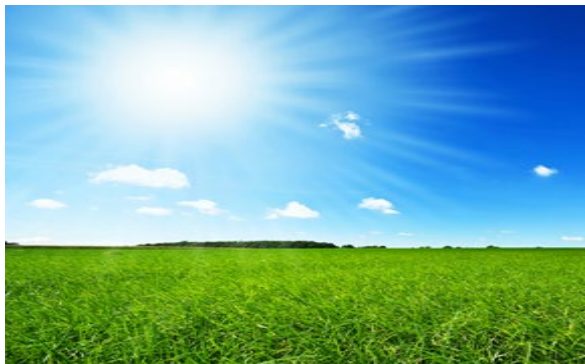




## Post Award Requirements for DOE SBIR/STTR Phase I Awardees

Mark Sojka

DOE Office of Science Consolidated Service Center



# Overview

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- **Site Visit Findings**
- **Importance of Knowing Your T&Cs**
- **Award Attachments**
- **Revisions to Award Needing Prior Approval**
- **Current and Pending Support**
- **Disclosure of Foreign Relationships**
- **Closeouts**

## **Recipient Site Visits Conducted by DOE In-Person and Virtual**

- Checked for Compliance with Award Terms and Conditions
- Reviewed ASAP Draw Supporting Documents
- Performed Accounting Systems Reviews
  - Ensure costs could be segregated
- Property/Equipment Reviews
- Answered Recipient Questions Concerning SBIR/STTR Program



- **Findings:**

- Recipients Did Not Always Have Adequate Support for Their ASAP Draws
- ASAP Draws in Advance (vs. Reimbursement)
- Cumulative Job Cost Totals Rather Than Snapshot of Costs to Support Particular ASAP Draw
- Missing SF-425s
- Property Controls/Tracking of Subcontractor-acquired equipment did not list its location; follow-up confirmed location/status.

- **Findings (cont.)**

- Insufficient Property Insurance Coverage
- DOE wasn't notified of company move
- DOE was charged higher than MI&E per diem rates stated in Company Policy Limits

# Importance of Knowing Your T&Cs



**Per 2 CFR 200.338 Remedies for Noncompliance, if a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency may impose additional conditions, as described in §200.207 Specific conditions.**

- Remove from Payment via ASAP/Require Submission of Invoices
- Temporarily withhold cash payments pending correction of the deficiency
- Denial of future SBIR/STTR Applications (due to Poor Past Performance)
- Withholding of Continuation Funding (Phase II Only)

**If the Federal awarding agency determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency may take one or more of the following actions, as appropriate in the circumstances:**

- Disallow all or part of the grant costs not in compliance (Cost Recovery)
- Wholly or partly suspend or terminate the Federal award.
- Initiate suspension or debarment proceedings (of individuals and/or the Company)
- Withhold further Federal awards for the project or program.
- Take other remedies that may be legally available.

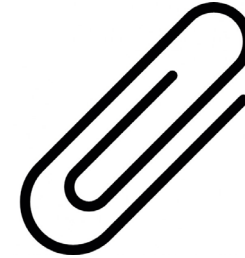


## Audits and Other Findings:

- Recipient did not meet the minimum Research Institution Level of Effort (30%) for an STTR and therefore DOE sought over \$18K in cost recovery. The recipient appealed the DOE Contracting Officer's decision to the DOE Senior Procurement Executive, and was denied. The recipient paid DOE the money sought plus interest.
- Two individuals were indicted, and found guilty of, committing conspiracy to commit wire fraud, wire fraud, aggravated identity theft and falsification of records. DOE recouped \$149,720.
- DOE recovered \$16,500 as a result of a plea agreement from an SBIR awardee; the awardee plead guilty to wire fraud.
- DOE OFS Audit and Review Team performing reviews of Awards
  - Possible undisclosed conflict of interest and payroll issues
  - ASAP draw reviews and Excessive Cash-on-Hand Balances

# Award Attachments

- **Transmittal Letter**
- **Final Budget Pages**
- **Special Terms and Conditions**
- **Federal Assistance Reporting Checklist**
- **General Terms and Conditions**
- **Know Your Rights Poster**
- **Patent Responsibility Letter**



# Special Terms and Conditions



- **Incorporates Provisions Stated in 2 CFR Part 200 and as amended in 2 CFR Part 910 (DOE-Specific).**  
<http://www.eCFR.gov>
- **Highlights:**
  - **FA-TC-0001C Award Project Period and Budget Periods**
  - **FA-TC-0003.2 Payment Procedures – REIMBURSEMENT Through the Automated Standard Application for Payments (ASAP)**
  - **FA-TC-0007.1 Rebudgeting and Recovery of Indirect Costs**
  - **FA-TC-0013 Reporting Requirements**
  - **FA-TC-0025A Insurance Coverage, FA-TC-0025D Equipment, FA-TC-0025G Property Trust Relationship (these 3 clauses pertain to awards containing equipment)**



# Reporting Requirements



## Phase I

DOE F 4800.2  
(3/2017)  
All Other Editions Are Obsolete

### U.S. Department of Energy FEDERAL ASSISTANCE REPORTING CHECKLIST AND INSTRUCTIONS

1. Identification Number: See Block 1 of the Assistance Agreement	2. Program/Project Title: See Block 21 of the Assistance Agreement	
3. Recipient: See Block 5 of the Assistance Agreement		
4. Reporting Requirements:	Frequency	Addressees
	<p><b>A. MANAGEMENT REPORTING</b></p> <p><input checked="" type="checkbox"/> Research Performance Progress Report (RPPR) (RD&amp;D Projects)</p> <p><input type="checkbox"/> Progress Report (Non-RD&amp;D Projects)</p> <p><input checked="" type="checkbox"/> Special Status Report</p> <p><b>B. SCIENTIFIC/TECHNICAL REPORTING</b> (Dissemination of results is required for RD&amp;D projects. Reports &amp; other S&amp;T publications/products must be submitted using the appropriate DOE Announcement Notice (AN) located at: <a href="https://www.osti.gov/elinlink">https://www.osti.gov/elinlink</a>)</p> <p><input checked="" type="checkbox"/> Scientific &amp; Technical Reporting Product</p> <p>    A. Journal Article-Accepted Manuscript <a href="#">DOE AN 241.3</a></p> <p>    B. Scientific/Technical Conference Paper/ Presentation or Proceedings <a href="#">DOE AN 241.3</a></p> <p>    C. Scientific/Technical Software &amp; Manual <a href="#">DOE AN 241.4</a></p> <p>    D. Other STI (e.g., dissertation/thesis, see instructions) <a href="#">DOE AN 241.3</a></p> <p><input checked="" type="checkbox"/> Final Scientific/Technical Report <a href="#">DOE AN 241.3</a></p> <p><b>C. FINANCIAL REPORTING</b></p> <p><input checked="" type="checkbox"/> SF-425 Federal Financial Report</p> <p><b>D. CLOSEOUT REPORTING</b></p> <p><input checked="" type="checkbox"/> Patent Certification</p> <p><input checked="" type="checkbox"/> SF-428 &amp; 428B Final Property Report</p> <p><input checked="" type="checkbox"/> Other (see special instructions)</p> <p><b>E. OTHER REPORTING</b></p> <p><input type="checkbox"/> Annual Indirect Cost Proposal</p> <p><input checked="" type="checkbox"/> Audit of For-Profit Recipients</p> <p><input checked="" type="checkbox"/> SF-428 Tangible Personal Property Report Forms Family</p> <p><input checked="" type="checkbox"/> Other (see special instructions)</p> <p>    <input checked="" type="checkbox"/> SBIR/STTR Funding Agreement Certification-Life Cycle</p> <p>    <input checked="" type="checkbox"/> Subject Invention Reporting and Patent Reporting</p> <p>    <input checked="" type="checkbox"/> NDA of 2019 Annual Technical or Business Assistance Report</p> <p>    <input checked="" type="checkbox"/> Disclosure of Foreign Relationships</p> <p>    <input checked="" type="checkbox"/> Current and Pending Support</p>	

FREQUENCY CODES AND DUE DATES:  
A – Within 5 calendar days after events or as specified.  
Y – Yearly; within 90 days after the end of the reporting period.  
Q – Quarterly; within 30 days after end of the reporting period.  
O – Other; See special instructions for further details.  
F – Final; within 90 calendar days after expiration or termination of the award.  
Y180 – Yearly; within 180 days after the end of the recipient's fiscal year.  
S – Semiannually; within 30 days after end of reporting period.

Research  
Performance  
Progress Report  
(RPPR)  
Special Status Report

SF-425

Compliance  
Audit

Life Cycle  
Certification

Disclosure of  
Foreign  
Relationships

Current and Pending  
Support

**Closeout**

Final SF-425

Patent Certification

Property  
Certification (SF-428)

Final Technical  
Report

Life Cycle  
Certification

Note: Reporting Requirements are subject to change via award modification.

# General Terms and Conditions

- **GTCs highlight those requirements which are especially pertinent to research grants in general.**
- **GTCs DO NOT represent an exhaustive listing of all requirements applicable to the Assistance Agreement.**
- **Highlights:**
  - **Revisions requiring Contracting Officer (CO) Approval**
  - **Current and Pending Support**
  - **Reporting of Disclosure of Foreign Relationships**
  - **Property**
  - **SBIR/STTR Participation Requirements (Awardee and PI)**
  - **Patent Rights**
  - **Rights in Data**

**KNOW THE RULES!**



## PI/Key Personnel Changes

- **PI Change request submitted via Portfolio Analysis and Management System (PAMS)**
- **Selection of the new PI from registered PAMS users**
  - Specify how to handle the current PI (remove from award or leave on award but change role to Other)
  - Attach resume or CV of the new PI.
- **The Small Business Authorized Representative must submit the request.**
- **Changes to the PI and other Key Personnel require prior DOE CO approval**

# Award Revisions – Other Types



- **Change/add Subcontractor**
- **Novation Agreement**
- **Change of Name Agreement**
- **Work outside of U.S.**
- **No Fund/Cost Extensions (NFX)**



**Note: Per the PAMS clause in the GTCs, NFX and PI change requests need to be submitted via PAMS.**

**Contact your DOE Assistance Agreement Administrator if you anticipate any of these revisions.**

# No Fund Extensions



- Approvals for an NFX will not be granted for an award that contains a zero dollar balance.
- Recipients are not authorized to grant themselves an extension.
- Proposed end date cannot go/extend beyond start date of the upcoming Phase II start.
- Submit request via PAMS no later than 10 calendar days prior to the expiration date. See SBIR/STTR-GTC-0043
- The request must be submitted by the Recipient Business Officer
- Info Required in Request:
  - Project status
  - Reason for extension
  - Extension date
  - Remaining Grant \$ Balance



## SBIR/STTR-GTC-0074-CH Current and Pending Support

- In accordance with the Federal Assistance Reporting Checklist, throughout the life of the award, the Recipient must submit current and pending support disclosure statements and a CV or Biosketch for any new PI and/or previously unnamed senior/key personnel, **including graduate students and postdoctoral associates, at the recipient and subrecipient level,** proposed to be added to the project funded under this Award at least thirty (30) days prior to the individual joining the project. In addition, **if there are any changes to current and pending support disclosure statements previously submitted to DOE, the Recipient must submit updated current and pending disclosure statements within thirty (30) days of the change.**
- The Recipient must ensure all PIs and senior/key personnel, including graduate students and postdoctoral associates, at the recipient and subrecipient level, are aware of the requirement to submit updated current and pending support disclosure statements to DOE. **Current and pending support is intended to allow the identification of potential duplication, overcommitment, potential conflicts of interest or commitment, and all other sources of support.**
- All foreign government-sponsored talent recruitment programs must be identified in current and pending support.



## SBIR/STTR-GTC-0041 Reporting of the Disclosure of Foreign Relationships

- **Disclosure statement originally submitted must be updated for any changes as follows:**
  - Any change to a disclosure required under the Disclosure of Foreign Relationships,
  - Any material misstatement that DOE could determine to pose a risk to national security, and
  - A change in ownership, change to entity structure, or other substantial change in the circumstances of the small business concern that DOE could determine to pose a risk to national security
- **The Disclosure of Foreign Relationships is located at:**  
<https://science.osti.gov/sbir/Applicant-Resources/Grant-Application>.
- Must be submitted to CO via FedConnect and to the SBA **w/i 30 days of a change and 30 days prior to the end of Phase I performance period** along with the Life Cycle Certification

## Penalties for Failing to Disclose Foreign Relationships

- Recipient will be required to repay all amounts received under the award (15 U.S.C. § 638(g), (o)) if there is a material misstatement that DOE determines poses a risk to national security, or there is a change in ownership, change to entity structure, or other substantial change in the circumstances of the small business concern that DOE determines poses a risk to national security.
- Further, the Recipient may be subject to the remedies established by 2 CFR 200.339 Remedies for noncompliance which may include termination under 2 CFR 200.400 Termination as set forth in SBIR/STTR-GTC-0042 and SBIR/STTR-GTC-0022, respectively, for failure to comply with the statutory requirements described in this award term.

**After the expiration or termination of the award, the recipient must submit all financial, performance and other reports required as a condition of the award. These reports are listed in the Federal Assistance Reporting Checklist and may include, but are not limited to, the following:**

- **Final Technical Report** (due 14 calendar days after expiration)
- **Final Financial Status Report** (due 120 calendar days after exp.)
- **Patent Certification** (due 120 calendar days after expiration)
- **Property Certification** (due 120 calendar days after expiration)
- **Life Cycle Certification** (at least 30 calendar days prior to exp.)
- **NDAA of 2019 Annual Technical or Business Assistance Report** (Submitted Annually in the Final Technical Report)
- **Disclosure of Foreign Relationships** (at least 30 calendar days prior to exp.)

**ALWAYS follow the instructions in your Reporting Checklist**

- Post award administration and budget-related questions may be directed to the DOE Assistance Agreement Administrator listed on page 2 of your Assistance Agreement.
- Post award technical and progress-related questions may be directed to the DOE Program Manager listed on page 2 of your Assistance Agreement.
- Patent and Intellectual Property-related questions may be directed to Maritza Rodriguez at [maritza.rodriguez@science.doe.gov](mailto:maritza.rodriguez@science.doe.gov)
- PAMS system requirements or any other technological issues should be directed to the DOE PAMS Support Center at 855-818-1846 or [sc.pams-helpdesk@science.doe.gov](mailto:sc.pams-helpdesk@science.doe.gov)



## DOE Office of Inspector General: Fraud, Waste & Abuse



## DOE Office of Inspector General

# Combating Fraud

- ***What types of fraud are found in the SBIR Program?***
- Application Process
  - submitting a plagiarized proposal
  - providing false information regarding the company, the Principal Investigator (PI), or work to be performed
  - seeking funding for work that has already been completed
- During Award
  - using award funds for personal use or for any use other than the proposed activities
  - submitting plagiarized reports or reports falsely claiming work has been completed
  - claiming results for an award that were funded by a different source

## DOE Office of Inspector General

# 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.
  - The company must meet SBA's requirements for a small business, including being majority American owned and have 500 employees or fewer.
  - For SBIR: The PI's primary employment must be with the company during the grant period. The PI may not be employed full time elsewhere.
  - For SBIR: 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 award should disclose their involvement to the university as well as their use of university facilities.
  - R&D must be performed in the United States.

## DOE Office of Inspector General

# Consequences

- ***What Happens If You Break the Rules?***
  - If you commit fraud or other wrongdoing in applying for or carrying out an SBIR award, we will investigate.
  - We refer violations of civil or criminal law to the Department of Justice (DOJ). If DOJ prosecutes you for fraud or false statements, you may be sentenced to prison and required to pay full restitution. If DOJ 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, DOE may terminate your awards and debar you from receiving grants or contracts from any federal agency.

## Recent Prosecution

**October 4, 2022**

### Lexington Woman Sentenced for Wire Fraud and Money Laundering

The United States District Court, Eastern District of Kentucky, sentenced Jyoti Agrawal (Agrawal) to **42 months in federal prison** for conspiracy to commit wire fraud, wire fraud, and money laundering.

According to evidence at her trial, Agrawal was a co-owner of the company ScienceTomorrow, with Subhadarshi Nayak. In December 2013, Agrawal agreed with Nayak to electronically submit a proposal containing a fabricated letter of support from a key subcontractor, in order to increase their chances of receiving a Phase II SBIR grant from the Department of Energy (DOE), in the amount of \$999,266.00, to research and develop a scanning electron microscope detector. Agrawal knew the fake letter inflated the budget an out-of-state university had provisionally authorized in support of the project.

In 2014, the DOE awarded the Phase II grant to ScienceTomorrow, in part relying on this misrepresentation. Agrawal ultimately received more than a million dollars for the project from DOE, and **\$500,000** from Kentucky's state matching funds program, which depends on the lawful receipt of a federal grant award.

The evidence further showed that Agrawal had controlled the money and that Nayak left the project early on. Ultimately, the out-of-state university did not work on the project, as proposed, and received no payments. Bank records established Agrawal had personally accumulated over \$440,000 of DOE grant funds during the two-year performance period. Agrawal also spent an additional \$146,000 of the DOE Phase II funds on an MBA degree in Chicago, during this time, partially supporting her money laundering conviction. Subsequently, Agrawal submitted false certifications to the DOE, stating all funds had been expended in accordance with DOE terms/conditions; however, the evidence at trial revealed she had unlawfully retained over \$300,000 of the DOE funds she certified she had spent on the project.

**Nayak was also convicted and sentenced in December 2021.**

As part of her sentencing, Agrawal was ordered to pay restitution in the amount of **\$1,048,255.00 to DOE and \$500,000 to Kentucky**. Nayak was also assigned restitution in conjunction with Agrawal.

## DOE Office of Inspector General

# Reporting Fraud

- The Department of Energy's Office of Inspector General (OIG) promotes the effective, efficient, and economical operation of DOE's programs and operations through audits, inspections, investigations, and other reviews.
- Within DOE OIG, the Office of Investigations is responsible for investigating any fraudulent acts involving DOE, 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](http://ig.energy.gov)  
**E-mail:** [jghotline@hq.doe.gov](mailto:jghotline@hq.doe.gov)  
**Telephone:** 202-586-4073  
**Hotline:** 800-541-1625  
**Fax:** 202-586-5697

U.S. DEPARTMENT OF ENERGY  
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