

In cooperation with Connecticut Innovations – 4/16/14



How to Establish an SBIR Accounting System that Can Withstand a Government Audit

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HOW TO SPEAK GREEK (THE FEDERAL ACQUISITION REGS.)

- 1. REPS AND CERTS – SBA RULES ON NEW 5107 POOLS**
- 2. \$1.5M COST FOR NOT UNDERSTANDING THE FAR AT PHASE II**
- 3. TWO KEY CONCEPTS TO AN “ACCEPTABLE ACCOUNTING SYSTEM”?**
 - A. ALLOWABLE, REASONABLE, ALLOCABLE**
 - B. DIRECT VS. INDIRECT VS. UNALLOWABLE COSTS**
- 4. SOME REQUIRED WRITTEN POLICIES & PRACTICES**
- 5. AUDITS - DoD vs. NIH**
- 6. THE COST OF NON-COMPLIANCE**

SBIR Program Eligibility – You Must Certify

SBA - CERTIFY SIZE, OWNERSHIP & CONTROL, OR UNDER 5107 AUTHORITY

Only United States small businesses are eligible to participate in the SBIR program. An SBIR awardee must meet the following criteria at the time of Phase I and II awards:

1. Organized for profit, with a place of business located in the United States;
2. More than 50 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States, or by another for-profit business concern that is more than 50% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States; and
3. No more than 500 employees, including [affiliates](#)

For awards from agencies using the authority under 15 U.S.C. 638(dd)(1), an awardee may be owned and controlled by more than one VC, hedge fund, or private equity firm so long as no one such firm owns a majority of the stock.

Phase I awardees with multiple prior awards must meet the [benchmark requirements for progress toward commercialization](#).

WHAT AUDITORS LOOK FOR PRIOR TO YOUR PHASE II

DCAA or DFAS

1. “Acceptable” accounting system
2. Reasonable cost proposal
(believable indirect rates)



SBIR PHASE II = FAR 52.216-7

Phase I = FFP

Phase II = CPFF

Award and ongoing compliance hinges on maintaining an “Acceptable” accounting system

A contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with applicable cost principles in this subpart and agency supplements. The contracting officer may disallow all or part of a claimed cost that is inadequately supported.



NIH GRANTS?

SECTION III – TERMS AND CONDITIONS – Standard Language in a Phase II

This award is based on the application submitted to, and as approved by, NIH on the above-titled project and is subject to the terms and conditions incorporated either directly or by reference in the following:

- a. The grant program legislation and program regulation cited in this Notice of Award.
- b. Conditions on activities and expenditure of funds in other statutory requirements, such as those included in appropriations acts.
- c. 45 CFR Part 74 or 45 CFR Part 92 as applicable.
- d. The NIH Grants Policy Statement, including addenda in effect as of the beginning date of the budget period.
- e. This award notice, INCLUDING THE TERMS AND CONDITIONS CITED BELOW.
(See NIH Home Page at <http://grants.nih.gov/grants/policy/awardconditions.htm> for certain references cited above.)

...lets take a poll

AN “ACCEPTABLE ACCOUNTING SYSTEM”

1. Does your General ledger segregate:

Direct costs

Indirect costs

Unallowable costs

Lab jackets polling question...

2. Written accounting policies and procedures

The Jameson Pass/Fail quiz:

A. Can you *produce monthly job cost reports at billing/target rates*

B. Can you tell me *what your indirect rates running now?*



SOME POLICIES AND PROCEDURES YOU MUST HAVE

A. Timesheets

1. Filled out in ink daily
2. Must record all time, signed by the employee
3. Signed by the supervisor
4. Changes must be crossed out (not erased) and initialed

B. Accounting for uncompensated overtime

1. $\$60,000/2,000 = \$30/\text{hour}$
2. Bill the government at $\$30/\text{hr.}$
3. Actually works 2,500 hours
4. Actual hourly rate is $\$24/\text{hr.}$



7 DCAA audits – problems surface

1. **Pre-award audit** – Review of the adequacy of your accounting system. You will not receive an award unless you pass.
2. **Indirect rate projection audit** – A review of the underlying projections used in establishing your provisional billing (and bidding) rates. Your invoices will be rejected until you proactively have your indirect rates approved by DCAA.
3. **Progress payment audit** – The DCAA judgmentally selects an invoice that you submit and traces all direct costs back to their originating source documents (timesheets, vendor invoices, expense reports, etc.).
4. **Surprise floor check** – DCAA will visit your facility and randomly (?) select your employees for audit to ensure that they are following the government’s strict timekeeping rules. Employees must be ready to properly answer questions on timekeeping procedures and must be able to demonstrate that their timesheets reflect those procedures.
5. **Financial capacity audit**
6. **Annual Incurred Cost Audit** – With a Phase 2 SBIR, your contract contains Federal Acquisition Regulation (FAR) clause 52.216-7 - The Allowable Cost Clause. This clause requires you to submit an annual “true up” report known as an Incurred Cost Submission 180 days after your fiscal year end. This submission has a 100% chance of being audited by DCAA and is their main event!
This audit is when you discover if your accountants knew what they were doing, or not – years after the fact.
7. **Contract close out**



NIH Grantee checkpoints

1. Pre-award – almost no resistance (J.I.T.)
2. Annual indirect rate negotiation with DFAS if F&A rate > 40%
3. SF425 – Reconcile the money drawn from the Payment Management System with what you've **earned** (in accordance with the federal acquisition regulations).
4. OMB A133 (Revenue earned > \$500,000)



4a. DUNS Number	4b. EIN	5. Recipient Account Number or Identifying Number	6. Report Type <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi-Annual <input type="checkbox"/> Annual <input type="checkbox"/> Final	7. Basis of Accounting <input type="checkbox"/> Cash <input type="checkbox"/> Accrual
8. Project/Grant Period From: (Month, Day, Year)		To: (Month, Day, Year)	9. Reporting Period End Date (Month, Day, Year)	

10. Transactions <i>(Use lines a-c for single or multiple grant reporting)</i>	Cumulative
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Federal Cash	
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a. Cash Receipts	
b. Cash Disbursements	
c. Cash on Hand (line a minus b)	

<i>(Use lines d-o for single grant reporting)</i>	
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Federal Expenditures and Unobligated Balance:	
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d. Total Federal funds authorized	\$0.00
e. Federal share of expenditures	\$0.00
f. Federal share of unliquidated obligations	\$0.00
g. Total Federal share (sum of lines e and f)	\$0.00
h. Unobligated balance of Federal funds (line d minus g)	\$0.00

Recipient Share:	
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i. Total recipient share required	\$0.00
j. Recipient share of expenditures	\$0.00
k. Remaining recipient share to be provided (line i minus j)	\$0.00

Program Income:	
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l. Total Federal program income earned	
m. Program income expended in accordance with the deduction alternative	
n. Program income expended in accordance with the addition alternative	
o. Unexpended program income (line l minus line m or line n)	

11. Indirect Expense	a. Type	b. Rate	c. Period From	Period To	d. Base	e. Amount Charged	f. Federal Share
g. Totals:							

12. Remarks: Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation:
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13. Certification: By signing this report, I certify that it is true, complete, and accurate to the best of my knowledge. I am aware that any false, fictitious, or fraudulent information may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 18, Section 1001)
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a. Typed or Printed Name and Title of Authorized Certifying Official	c. Telephone (Area code, number and extension)
	d. Email address
b. Signature of Authorized Certifying Official	e. Date Report Submitted (Month, Day, Year)

14. Agency use only:

Standard Form 425
OMB Approval Number: 0348-0061
Expiration Date: 10/31/2011

Paperwork Burden Statement

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is 0348-0061. Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0060), Washington, DC 20503.

NORTHWESTERN PAYS \$3MM FOR FRAUD

According to the Wall Street Journal, Northwestern University agreed to pay nearly \$3 million to settle claims that a former cancer researcher fraudulently used federal grant money for personal expenses, including food, hotels and airfare for family trips between 2003 and 2010.

The whistleblower, Melissa Theis, worked as a purchasing coordinator, processing invoices when she 'noticed some red flags,' according to her attorney.

The federal False Claims Act allows private citizens who allege government programs are being defrauded to file actions on behalf of the government and receive a portion, usually 15% to 30%, of any recovered damages.

Ms. Theis will get \$498,100 in settlement proceeds, according to the agreement.

Defense Contractor MPRI Settles \$3.2
Million Lawsuit Brought by
Whistleblower

PR Newswire

ATLANTA, Feb. 13, 2014

COMPLIANCE SUMMARY

- SBIR/STTR phase II, R01 & BAA contracts and grants almost always contain Federal Acquisition Regulations (FAR) clause 52.216-7 – *Allowable Costs*
- This FAR clause requires you to follow the Cost Accounting Standards and the Federal Acquisition Regulations

Prior to award, you need to have an “acceptable accounting system”.

Your accounting records can be audited at any time and need to be “always audit ready”.

There is an annual Incurred Cost Submission that must be prepared and has a 100% chance of being audited.



COST OF NOT BEING COMPLIANT?

False sense of security - DCAA hopes to be
'caught up' through 2009 by the end of this
year

\$xxx,000 in disallowances (typically years later)

Don't charge the government for things you are
entitled to (\$xxx,000)

“Unacceptable accounting system” – loss of
award, employees, investors... game over!



NEXT STEPS

Our \$495 *Phase 1A Analysis*:

- 1. Accounting system adequacy** – our analysis will include a review of specific areas of your company's accounting system, including job costing, time reporting, and underlying documentation.
- 2. Unallowable cost assessment**
- 3. Program management**

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