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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEB SITE: <http://commerce.senate.gov>

June 14, 2011

Alison C. Lerner
Inspector General
National Science Foundation
4201 Wilson Boulevard
Arlington, VA 22230

Dear Inspector General Lerner:

I congratulate you for holding a workshop on fighting fraud in the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. I also applaud the hard work the Council of Inspectors General for Integrity and Efficiency's (CIGIE) Research Misconduct Working Group has done over the past several years to focus attention on this significant problem. I look forward to continue working with you and my congressional colleagues to make sure our federal scientific research dollars are not lost to waste, fraud, or abuse.

In preparation for your workshop, I am writing to provide you background on the investigation that the Senate Committee on Commerce, Science, and Transportation, where I serve as chairman, conducted into waste, fraud, and abuse in the SBIR and STTR programs. I will also discuss how the findings of my Committee's investigation, combined with input from the Research Misconduct Working Group, have led to legislative proposals that will improve our ability to conduct oversight of these programs.

The Value of the SBIR and STTR Programs

One of my top priorities as Chairman of the Commerce Committee is maintaining our country's position as the global leader in technological innovation. To maintain our leadership in the global economy, we must continually invest in new ideas. I strongly believe these investment dollars have to come from both private and public sources.

The SBIR program – along with its partner the STTR program – is one of the federal government's successful technology innovation initiatives. These programs provide more than \$2 billion in funding each year for early stage research and development projects at small technology companies. They support scientists and entrepreneurs who have great ideas, but have not been able to develop their ideas far enough to attract the attention of private investors.

Many of our innovative commercial products and technologies began as SBIR or STTR research proposals. An SBIR contract awarded by the National Aeronautics and Space

Administration (NASA) led to the development of the water filtration system used on space missions. Another SBIR-funded project helped develop the de-icing systems used today on many of our aircraft.

I am proud to say that West Virginia small businesses have used SBIR funding to make important contributions to our economy and national security. A company called FMW Composite Systems in Bridgeport, West Virginia, used SBIR funds from the Air Force to develop a new super-strong titanium alloy that is helping our military build missiles with a longer range and increased payloads. Another company called Touchstone Research Laboratory in Triadelphia, West Virginia, used SBIR funds from the Missile Defense Agency to develop an ultra-high performance carbon foam insulation product called CFOAM, which has a number of military and commercial applications.

Fraud is an Issue in the SBIR and STTR Programs

In general, I believe that the eleven agencies that make SBIR and STTR awards are administering these funds wisely and are awarding their research funds to small businesses and researchers who are putting the money to good use. But we know that a portion of SBIR and STTR funds have been lost to waste, fraud, and abuse.

In a hearing and investigation that the Senate Commerce Committee conducted in 2009, we documented a number of cases in which federal agencies awarded research dollars to businesses that lied to the government about their qualifications or their research capabilities.¹ We learned about businesses that accepted taxpayer dollars for research they had not actually done. We also learned about a form of fraud known as “duplicate funding,” where businesses double or triple-bill the government, by getting multiple federal agencies to pay them for the same research.

At a Senate Commerce Committee hearing in August 2009, we heard testimony about this problem from a businessman named Al Longhi. Mr. Longhi testified about how he discovered that a small technology company where he was working, Lithium Power Technologies, was ripping off a number of different government agencies. The owner of Mr. Longhi’s company won a number of SBIR contracts using false information, and he received government payments by submitting false reports and invoices. In some cases, Mr. Longhi’s company was getting paid for the same work by multiple agencies, including NASA, the Department of Energy, the Army, the Air Force, the Ballistic Missile Defense Agency, and the Office of the Secretary of Defense. The only reason we learned about this fraudulent conduct was that Mr. Longhi courageously blew the whistle on the company’s owner.

¹ Senate Committee on Commerce, Science, and Transportation, *Waste, Fraud and Abuse in the Small Business Innovation Research (SBIR) Program*, 111th Cong. (Aug. 6, 2009) (online at <http://commerce.senate.gov>).

In preparation for the Commerce Committee's August 2009 hearing, with the assistance of the National Science Foundation (NSF) and NASA Inspector General (IG) offices, my staff compiled a list of known SBIR/STTR fraud cases. Between 1990 and 2009, we found 29 cases of SBIR fraud, involving more than 300 SBIR or STTR contracts worth more than \$100 million. We suspect these cases represent a small portion of the actual fraud that occurred in the program during the period.

Fraud in the SBIR and STTR programs continues to be a problem. Just a few months ago, a federal court in Florida convicted a University of Florida physics professor and his wife of providing false information and invoices to obtain \$3 million dollars in SBIR payments from the Air Force and NASA. In this case, which was initially investigated by the NASA IG's Office of Investigations, the government alleged that the professor and his wife were improperly using the award money to purchase a luxury automobile and a vacation home, rather than conduct the research for which they accepted the money.

We cannot tolerate this kind of conduct. We do not expect that every research project supported by the SBIR or STTR programs will lead to the next breakthrough technology. But we do expect the people who receive these funds to use them carefully and honestly.

The federal government's scientific research dollars are scarce and precious. Funding research is a zero-sum game: every time NASA, NSF, or the Department of Defense award money to a dishonest business, those agencies miss an opportunity to support an honest man or woman with an idea that might make our country safer or our economy stronger.

Addressing Waste, Fraud, and Abuse Issues in the SBIR/STTR Program

I am pleased that since the Commerce Committee's hearing in August 2009, the CIGIE Research Misconduct Working Group has been focusing on this issue and working to raise awareness in the SBIR and STTR communities that waste, fraud, and abuse are a problem. I appreciated the letter you sent me on March 16, 2011, updating me on the group's recent efforts to fight fraud in the SBIR and STTR programs. In the letter, you reported that the group's efforts to date "demonstrate that there is significant unaddressed fraud in these programs."

According to the letter, the NSF Office of Inspector General has opened 56 new SBIR cases since the Commerce Committee's 2009 hearing, 43 of which are still being actively investigated. NASA IG Paul Martin recently informed me in a recent letter that his office has opened 29 new SBIR cases since the 2009 hearing, 22 of which are still open. Many of these cases overlap with other SBIR-granting agencies, especially the Department of Defense and the Department of Energy.

In addition to these recent enforcement cases, one of the most important SBIR oversight efforts that has occurred since the Commerce Committee's hearing is an audit that the NASA

IG's office undertook of NASA's SBIR program.² NASA's program is the third largest in the federal government, distributing more than \$110 million a year to small businesses. I congratulate NASA IG Martin and his auditing team for their work on this project.

The audit contained both good and bad news. It found that NASA was doing a good job reviewing applications and making awards based on the merits of the proposals. But it also found that NASA was not doing a good enough job monitoring the contracts after they were awarded. NASA had paid many SBIR awardees for unallowable expenses and it lacked internal controls to prevent and detect fraud and abuse.

Addressing Waste, Fraud, and Abuse in the SBIR/STTR Reauthorization Process

As we discovered during the Commerce Committee investigation, the dispersed structure of the SBIR and STTR programs creates some unique oversight challenges. Since SBIR and STTR funds are awarded by eleven separate federal agencies, it is difficult to coordinate and track how these funds are being used across the entire federal government. Another challenge is that the programs award large numbers of low-dollar grants and contracts. It is often difficult for awarding agencies to justify time-consuming and expensive enforcement actions against awardees who have defrauded the government of just a few hundred thousand dollars.

I am pleased to say that in both the 111th and 112th Congresses, the committees responsible for re-authorizing the SBIR and STTR programs have taken important steps to address our concerns about waste, fraud, and abuse in the programs. The final Senate-passed version of the reauthorization bill in the 111th Congress (S. 4053) required the Small Business Administration (SBA) to gather more information about SBIR and STTR applicants in its Tech-Net database, so agencies and other auditors can track down companies that are making undisclosed applications to multiple agencies for the same work. And for the first time, it sets aside a small portion of SBIR and STTR funds that can be used to audit and review contracts that may be at high risk for waste, fraud, and abuse. It also treats the Government Accountability Office (GAO) and the Inspectors General of the SBIR agencies as crucial partners in the effort to make sure SBIR and STTR dollars get spent on innovation, not wasted on fraud.

Earlier this year, during the Senate's consideration of the reauthorization legislation introduced in the 112th Congress (S. 493), Senator Chuck Grassley and I offered an amendment designed to strengthen the bill's already robust waste, fraud, and abuse provisions. The changes proposed in the Rockefeller-Grassley amendment were the product of our continuing dialogue with the CIGIE Research Misconduct Working Group. I am very pleased that the House of Representatives Science, Space, and Technology Committee included our proposed amendment in the SBIR/STTR reauthorization bill (H.R. 1425) it reported just a few weeks ago.

² National Aeronautics and Space Administration Office of Inspector General, *Review of NASA's Management of Its Small Business Innovation Research Program* (Jan. 2011) (IG-11-010-R) (online at <http://oig.nasa.gov/audits/reports/FY11/IG-11-010-R.pdf>).

The most important policy proposal in the Rockefeller-Grassley amendment requires the use of “certifications” in SBIR and STTR applications and awards. The Research Misconduct Working Group informed me that one of the most important tools IGs have when fighting fraud in the SBIR or other government programs are the “certifications” that participants sign when they apply for a grant or contract, and that awardees sign when requesting payments.

The certification process is very straightforward – it simply requires SBIR and STTR applicants and awardees to explicitly recognize their obligation to provide accurate information to the government, and to perform the work they promise to do in exchange for payment. Certification does not mean extra paperwork. When applicants submit required forms and reports to the SBIR or STTR programs, they state they understand what they are submitting and that they are providing accurate information.

Certifications may seem like a small administrative matter, but they can make or break a successful prosecution of someone who has defrauded the government. The Research Misconduct Working Group told us it is much more difficult to prosecute people and businesses for fraud if they have not certified their information. Without certification, it is much easier for a fraudulent awardee to plead ignorance or misunderstanding. U.S. Attorneys will not take fraud cases without these certifications because they are more difficult and time-consuming to prosecute.

Some agencies like NSF already require their SBIR and STTR applicants and awardees to certify their information. NSF requires certifications from applicants seeking SBIR or STTR funding, from award recipients prior to initial payment, and in conjunction with Phase I and Phase II interim and final reports. NSF has required these “lifecycle” certifications for over 15 years without any significant burdens on the agency or on program participants. Other agencies that spend SBIR and STTR funds, however, do not require certifications and therefore are in a weaker legal position to protect the government against fraud.

The Rockefeller-Grassley amendment orders the SBA to revise its SBIR and STTR Policy Directives to require all of the eleven SBIR agencies to use certifications in their application, payment, and reporting processes. The agencies will require all program participants to certify that the information they are submitting to the government is accurate and complete to the best of their knowledge under penalty of law. These certifications are a simple, cost-effective way to protect the SBIR and STTR programs from fraud and will help protect our nation’s scarce research dollars from fraud and abuse.

Conclusion

The tough new oversight measures Congress has endorsed in the SBIR/STTR reauthorization process focus important attention and resources on preventing fraud in the SBIR and STTR programs. We have also expressed our support for giving Inspectors General better enforcement tools to hold accountable the small number of businesses and researchers who will continue to try to defraud the programs. I will continue working to make sure these pro-taxpayer

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provisions are part of the final reauthorization bill approved by Congress and signed by the President.

I appreciate the valuable assistance you and other Inspectors General provided the Commerce Committee as we gathered information about waste, fraud, and abuse in the SBIR and STTR programs. I also appreciate the recommendations you have given me and other Members of Congress as we have been developing legislative solutions to this problem. I look forward to continue working with you in the future to make sure that the money we invest in our nation's future economic competitiveness is spent wisely and carefully.

Sincerely,



John D. Rockefeller IV
Chairman

cc: Kay Bailey Hutchison
Ranking Member