



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
INSPECTOR GENERAL

June 15, 2023

**MEMORANDUM**

**SUBJECT:** Management Implication Report: Conflicts of Interest in Small Business Innovation Research Solicitations and Contracts

**FROM:** Jason Abend, Assistant Inspector General  
Office of Investigations

A handwritten signature in black ink, appearing to read "Jason Abend", is written over the printed name and title.

**TO:** Dr. Chris Frey, Assistant Administrator and EPA Science Advisor  
Office of Research and Development

Kimberly Patrick, Principal Deputy Assistant Administrator  
Office of Mission Support

**Purpose:** The U.S. Environmental Protection Agency Office of Inspector General is statutorily mandated “to prevent fraud, waste, and abuse in the [Small Business Innovation Research] program” by, among other things, “reviewing regulations and operating procedures of the” EPA. 15 U.S.C. § 638b(a)(5)(B). To this end, the EPA OIG has identified a concern regarding the procurement process for EPA Small Business Innovation Research, or SBIR, contracts. While the Agency’s SBIR Phase I [solicitation](#) for fiscal year 2022–2023 specifically required applicants to identify the existence of and report potential organizational conflicts of interest known at the time of the application to the EPA, the solicitation did not include information on how applicants could avoid and mitigate conflicts of interest. Additionally, the solicitation did not include the contract clauses that would require award recipients to immediately notify the EPA of organizational or personal conflicts of interest that arise during the course of performance of the contract, and we noted that the different SBIR contracts we reviewed did not consistently include conflict-of-interest provisions. We are issuing this report to inform the Agency of our concerns relating to the lack of conflict-of-interest provisions and clauses in the SBIR procurement documents and to provide considerations for the EPA to strengthen its SBIR Program against fraud, waste, and abuse.

**Background:** The EPA SBIR Program supports federal research and development of technology that has the potential for commercialization. Each year, the EPA SBIR Program issues a solicitation seeking project proposals for technology to address specific areas, such as clean and safe water, air quality and climate, land revitalization, homeland security, sustainable materials management, safer chemicals, and risk assessment. Submitted proposals are then evaluated on their technical merit, potential for commercialization, and impact on the given area. As explained on the EPA SBIR Program [website](#), the Agency funds the selected SBIR projects in two phases. For Phase I, the EPA awards contracts of up to \$100,000 for proof of concept of the proposed technology. Companies that receive a Phase I contract can then submit a proposal for Phase II funding of up to \$400,000 to further develop and commercialize the technology.

For its fiscal year 2022–2023 SBIR Phase I solicitation, the EPA awarded 25 contracts. Each of these contracts provided approximately \$100,000 for the selected SBIR projects, with the contracts starting in

December 2022 and ending in either May or June 2023. The EPA’s [website](#) states that it intends to release its next SBIR solicitation in June 2023.

In the EPA’s fiscal year 2022–2023 Phase I SBIR solicitation, Appendix 4 contained a series of representations and certifications that applicants were required to sign and return with their proposal, including an organizational conflict-of-interest certification.<sup>1</sup> Specifically, the solicitation required that applicants check the appropriate box in the following certification statement:

The offeror [ ] is [ ] is not aware of any information bearing on the existence of any potential organizational conflict of interest. If the offeror is aware of information bearing on whether a potential conflict may exist, the offeror shall provide a disclosure statement describing this information.

The Environmental Protection Agency Acquisition Regulation, or EPAAR, is the EPA’s supplemental regulation to the Federal Acquisitions Regulation, which is the principal set of rules governing procurement for the federal government. The EPAAR contains the following provisions and clauses related to conflicts of interest, which the EPA is to include in its procurement documents, as appropriate:

- Section [1552.209-72](#) provides an organizational conflict-of-interest certification to include in solicitations. As discussed above, the EPA included this provision its fiscal year 2022–2023 SBIR Phase I solicitation.
- Section [1552.209-70](#) provides a notification provision to include in solicitations that advises applicants where they can find information in the Federal Acquisitions Regulation and EPAAR on policies and procedures for avoiding, neutralizing, and mitigating organizational conflicts of interest.
- Section [1552.209-71](#) provides a notification clause to include in solicitations and contracts that requires contractors to give immediate notice to the EPA upon learning of an actual or potential *organizational* conflict of interest during performance of the contract. This section also states that any subcontract or consultant agreement with the contractor must have a similar clause.
- Section [1552.209-73](#) provides a notification clause to include in solicitations and contracts that requires contractors to immediately notify the EPA if there is an actual or potential *personal* conflict of interest relating to any employees working on or having access to contract information. This section also states that any subcontract or consultant agreement with the contractor must have a similar clause.

These provisions and clauses, however, are optional for simplified acquisitions, which would mean procurements under the \$250,000 simplified acquisition threshold. Because the maximum for an SBIR Phase I award is \$100,000, the EPA is not required to include these provisions or clauses in its SBIR Phase I procurement documents.

---

<sup>1</sup> The Federal Acquisition Regulation at [section 2.101](#) defines organizational conflict of interest to mean that “because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.”

**Concern Identified:** We prevent and detect fraud, waste, and abuse in the EPA SBIR Program by, among other things, promoting best practices in the EPA SBIR program and investigating instances of SBIR-related fraud, including matters involving either actual or potential conflicts of interest. For example, as a result of an SBIR investigation that we conducted, a North Carolina company was [sentenced](#) on June 7, 2021, after pleading guilty to two counts of providing false statements to the EPA and the National Science Foundation in its SBIR and other grant applications. The company was ordered to pay over \$300,000 to the EPA in restitution and serve five years of probation. In one of its applications, the company represented that it would subcontract work with a university, but it did not disclose that two of its employees, who were also founding members of the company, were faculty at the university and that a third founding member worked as a graduate assistant at the university. Moreover, the company did not disclose that the two faculty members were married to each other. As such, it was not readily apparent to the EPA that one spouse would represent the SBIR contractor and the other would perform work for the subcontracted university.

We have observed an increasing number of hidden personal relationships in connection with SBIR awards. These hidden relationships can be indicators of fraud. For example, another of our investigations determined that a husband and wife in central Florida fraudulently sought awards under the EPA SBIR Program by submitting applications for two separate companies, each being owned by a different spouse while also employing the other spouse as a senior scientist. Because the couple used different names, it was not readily apparent to the EPA that the two individuals were married. Had that relationship been known to the EPA, the fraud may have been detected sooner. Our investigation resulted in the couple being [sentenced](#) to multiyear prison terms and ordered to pay millions of dollars in restitution for fraudulently obtaining funds through the EPA SBIR Program.

These examples highlight the need for the EPA's SBIR procurement documents to include the most comprehensive conflict-of-interest notice provisions and clauses, including:

- ***Organizational Conflict-of-Interest Notification Provisions for Solicitations:*** While the EPA's fiscal year 2022–2023 SBIR solicitation included the certification for applicants to attest that they were not aware of any potential organizational conflicts of interest at the time of the application, the solicitation did not include the EPAAR section 1552.209-70 provision that advises applicants where they can find information related to avoiding, neutralizing, and mitigating organizational conflicts of interest.
- ***Organizational and Personal Conflict-of-Interest Notification Clauses:*** The EPA's fiscal year 2022–2023 SBIR Phase I solicitation did not include the EPAAR requirements for contractors, subcontractors, and consultants to provide immediate notice to the EPA of any organizational and personal conflicts of interest that arise during the performance of the contract. In contrast, the SBIR Phase I [solicitation](#) for fiscal year 2021 contained the organizational, but not the personal, conflict of interest notification requirement. We also noted inconsistencies in the clauses included in the EPA's SBIR contracts. For example, one Phase I SBIR contract that we reviewed included both notification clauses, while another Phase I SBIR contract that we reviewed only included the organizational notification clause.

Although these provisions and clauses are optional for procurements under the simplified acquisition threshold, given our observation of the increased prevalence of fraud and conflicts of interest related to SBIR awards, we suggest that the EPA consider including these provisions and clauses in all applicable SBIR procurement documents, regardless of the contract amount. We would further suggest that solicitations and contracts be thoroughly reviewed to ensure that all applicable provisions and clauses

related to conflicts of interest are included to avoid inconsistencies, which could confuse applicants and contractors. By taking these steps, the EPA can increase awareness of conflicts of interest and the likelihood that it will be notified of any actual or potential conflicts of interest before and during the contract performance period. These steps will also assist us as we investigate conflicts of interest that present a risk of waste, fraud, and abuse to the EPA SBIR Program.

My office is notifying you of this issue so that the Agency may take whatever steps it deems appropriate. If you decide it is appropriate for your office to take or plan to take action to address these matters, we would appreciate notification of that action. Should you have any questions regarding this memorandum, please contact Special Agent in Charge [REDACTED] at [REDACTED] or via email at [REDACTED].

cc: Sean W. O'Donnell, Inspector General