

## Exhibit II-1: Proposal Preparation Checklist

It is imperative that all proposals conform to the proposal preparation and submission instructions specified in this Guide. Proposals also must comply with NSF font, spacing and margin requirements. The guidelines specified in GPG Chapter II.B establish minimum requirements; however, readability is of utmost importance and should take precedence in selection of an appropriate font. Conformance with all preparation and submission instructions is required and will be strictly enforced unless a deviation has been approved in advance of proposal submission. NSF may return without review proposals that are not consistent with these instructions. See GPG Chapter IV.B for additional information.

Prior to electronic submission, it is strongly recommended that an administrative review be conducted to ensure that proposals comply with the instructions, in the format specified. This checklist is not intended to be an all-inclusive repetition of the required proposal contents and associated proposal preparation guidelines. It is, however, meant to highlight certain critical items so they will not be overlooked when the proposal is prepared.

### General:

- Proposal is responsive to the program announcement/solicitation or to the GPG.
- If a proposal has been previously declined and is being resubmitted, proposal has been revised to take into account the major comments from the prior NSF review.
- Proposed work is appropriate for funding by NSF, and is not a duplicate of, or substantially similar to, a proposal already under consideration by NSF from the same submitter.

### Single Copy Documents:

- Information about Principal Investigators/Project Directors (except for the required information regarding current or previous Federal research support and the name(s) of the PI/co-PI, submission of the information is voluntary).
- Authorization to Deviate from NSF Proposal Preparation Requirements (if applicable).
- List of Suggested Reviewers, or Reviewers Not to Include (optional).
- Proprietary or Privileged Information Statement (if applicable).
- Proposal Certifications (submitted by the Authorized Organizational Representative within 5 working days following the electronic submission of the proposal.) (See GPG Chapter II.C.1e for a complete listing of proposal certifications.)
- SF LLL, Disclosure of Lobbying Activities (if applicable). (One copy only, scanned as a single copy document.)

### Cover Sheet:

- Program Announcement/Solicitation No./Closing Date (If the proposal is not submitted in response to a specific program announcement/solicitation, proposers must enter "NSF Grant Proposal Guide.")
- Specific NSF program(s) identified (if known).
- For renewal proposal, previous award number entered.
- Related preliminary proposal number entered (if applicable).
- Check Appropriate Box(es), and provide requisite information, if the proposal includes any of the items identified. Note in particular, proposals that include use of human subjects or vertebrate animals require additional information to be submitted with these types of proposals.

### Project Summary:

Note limitation of one page, and the requirement that both merit review criteria be separately addressed within the body of the Summary.

## ASSURANCES, REPRESENTATIONS, CERTIFICATIONS, AND WARRANTIES

Accompanying a proposal submission when the award contemplates the use of federal funds and particularly in response to a Request for Proposal (RFP), an institutional official normally is required to provide certain assurances, representations, and certifications to the potential sponsor.

In the case of assistance awards, the assurances, representations, and certifications may be incorporated by reference in signing the proposal or are incorporated either specifically or by reference in the award document itself.

In the case of contracts, the government has recently instituted an annual certification process made online through its "Online Representations and Certifications Application (ORCA)" which can be accessed at <https://orca.bpn.gov/>. ORCA information must be renewed/updated annually by the institution.

Guidelines with regard to certifications for grants and agreements appear in many agency documents.

In general, it is believed that certifications (sometimes referred to as attestations) have higher legal requirements and authorities than assurances or representations.

### Assurance

An assurance is a written guarantee or pledge that one will operate in a certain way or comply with certain terms and conditions of an award. *Black's Law Dictionary* (7<sup>th</sup> ed., 1999) states that an assurance is "something that gives confidence; the state of being confident or secure."

### Representation

A representation is an account or statement of fact concerning an offeror and its capabilities and abilities to perform. It is viewed legally as an inducement to parties to enter into a contract. According to Black's, it may introduce terms into a contract and affect performance thereof. Black's points out that a representation may be a vital part of a contract (a "condition") and an untruth may entitle the injured party to repudiate the entire contract, or it might be "an independent subsidiary promise" (normally called a "warranty"), which, for an untruth, may allow the injured party to claim damages but will not provide grounds to invalidate the entire contract.

In other words, if a person makes a fraudulent representation in connection with a contract, the contract may be voided. A misrepresentation is an assertion that is not in accord with the facts and if it is made knowingly, then it is clearly fraudulent. Representations are also fraudulent if the person making the representation does not have confidence in the truth of such a representation or if the person knows that he/she does not have a basis for such a representation. If the untrue representation involves a material fact, the contract is voidable, regardless of whether there was an intent to defraud.

### Certification

A certification is the submission of documents that serve as guarantees that the award applicant meets certain standards or will comply with certain governmental acts. Generally, the government views a certification as an attestation for which false certification may make the individual subject to criminal sanctions.

Although all the certifications carry the same force, many institutions approach the certification requirements by separating them into three categories:

- (1) those that need special monitoring (normally related to fraud, waste, abuse; research subjects; and costs);
- (2) those that need routine monitoring (such as access to records, labor standards, nondiscrimination/affirmative action, and environmental issues); and
- (3) those that need minimal monitoring (place of performance, patents and copyrights, and other items requiring merely that certain information be provided to the sponsoring agency at certain times).

Certifications are provided in writing and are signed.

## Warranty

A warranty is a promise that the goods and/or services described within the terms of a contract will be delivered as represented or promised. According to Black's, "A warranty differs from a representation in four principal ways: (1) a warranty is an essential part of a contract, while a representation is usually only a collateral inducement, (2) a warranty is always written on the face of the contract, while a representation may be written or oral, (3) a warranty is conclusively presumed to be material, while the burden is on the party claiming breach to show that a representation is material, and (4) a warranty must be strictly complied with, while substantial truth is the only requirement for a representation."

While making representations and certifications is a routine matter for most sponsored programs administrators, these should not be done cavalierly especially with respect to contracts with the federal government. In 1984, the United States Supreme Court<sup>1</sup> stated that "protection of the public fisc requires that those who seek public funds act with scrupulous regard for the requirements of the law," and that "those who deal with the Government are expected to know the law."

When false representations and certifications are made, these can become a violation of the False Claims Act (see Introduction). Section 3729 of that Act expressly provides that "no proof of specific intent to defraud is required" in order to establish that one acted knowingly within the meaning of the Act. Instead the term "knowingly" is expressly defined in the Act as including statements made with reckless disregard or deliberate ignorance of the truth or falsity of a defendant's representations to the government. What this really means is that if a person fails to make simple inquiries about whether or not a certification or representation to be made to the government is true, then they are knowingly violating the False Claims Act.

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<sup>1</sup> *Heckler v. Community Health Services of Crawford County, Inc.*, 467 U.S. 51.

**c. List of Suggested Reviewers or Reviewers Not to Include (optional)**

Proposers may include a list of suggested reviewers who they believe are especially well qualified to review the proposal. Proposers also may designate persons they would prefer not review the proposal, indicating why. These suggestions are optional. GPG Exhibit II-2 contains information on conflicts of interest that may be useful in preparation of this list.

The cognizant Program Officer handling the proposal considers the suggestions and may contact the proposer for further information. However, the decision whether or not to use the suggestions remains with the Program Officer.

**d. Proprietary or Privileged Information (if applicable)**

Instructions for submission of proprietary or privileged information are provided in GPG Chapter I.D.3.

**e. Proposal Certifications**

With the exception of the Disclosure of Lobbying Activities (SF LLL) identified below, the procedures for submission of the proposal certifications differ from those used with other single-copy documents. The AOR must use the "Authorized Organizational Representative function" in the FastLane System to electronically sign and submit the proposal certifications. It is the proposing organization's responsibility to assure that only properly authorized individuals sign in this capacity.<sup>11</sup>

The required proposal certifications are as follows:

- **Certification for Authorized Organizational Representative or Individual Proposer:** The AOR is required to complete certifications regarding the accuracy and completeness of statements contained in the proposal, as well as to certify that the organization (or individual) agrees to accept the obligation to comply with award terms and conditions.
- **Certification Regarding Conflict of Interest:** The AOR is required to complete certifications stating that the institution<sup>12</sup> has implemented and is enforcing a written policy on conflicts of interest, consistent with the provisions of AAG Chapter IV.A.; that, to the best of his/her knowledge, all financial disclosures required by the conflict of interest policy were made; and that conflicts of interest, if any, were, or prior to the institution's expenditure of any funds under the award, will be, satisfactorily managed, reduced or eliminated in accordance with the institution's conflict of interest policy. Conflicts that cannot be satisfactorily managed, reduced or eliminated must be disclosed to NSF via use of the Notifications and Requests Module in the NSF FastLane System.
- **Drug-Free Workplace:** The AOR is required to complete a certification regarding the Drug-Free Workplace Act. See GPG Exhibit II-3 for the full text of the Drug-Free Workplace Certification.
- **Debarment and Suspension:** The AOR is required to complete a certification regarding Debarment and Suspension. See GPG Exhibit II-4 for the full text of the Debarment and Suspension Certification.
- **Certification Regarding Lobbying:** When the proposal exceeds \$100,000, the AOR is required to complete a certification regarding lobbying restrictions. The *Certification for Contracts, Grants, Loans and Cooperative Agreements* is included in full text on the FastLane submission screen as well as in GPG Exhibit II-5. The box for "Disclosure of Lobbying Activities" must be checked on the proposal Cover Sheet only if, pursuant to paragraph 2 of the certification, submission of the SF LLL is required.<sup>13</sup>

<sup>11</sup>Detailed instructions for completion of this process are available electronically on the FastLane Website.

<sup>12</sup>For consistency with the Department of Health and Human Services conflict of interest policy, in lieu of "organization," NSF is using the term "institution" which includes all categories of proposers.

<sup>13</sup>Detailed instructions for submission of the SF LLL are available on the FastLane Website.