

CHAPTER 5

ADDITIONAL DOCUMENTATION

Below are listed the additional documents that may be requested from the proposer(s) at any time during the evaluation process. The most detailed and complicated is the Joint Venture Agreement (JVA), the requirements of which are covered in 7.a. through 7.g. Further discussion regarding the importance of the JVA, where to find the sample JVA and intellectual property plan, and issues to be considered while negotiating the JVA are covered following the list of additional forms and documents, below.

The following additional forms and documents, which are available at <http://www.nist.gov/tip/helpful-resources.cfm>, may be requested from a proposer at any time during the multi-disciplinary peer-review process:

1. SF-424B, Assurances—Non-Construction Programs.
2. Form CD-346, Applicant for Funding Assistance.
3. Form CD-511, Certifications Regarding Lobbying.
4. SF-LLL, Disclosure of Lobbying Activities, if applicable.
5. Financial information. The proposing company or each joint venture member (except for universities, national laboratories, and government agencies) will be asked to provide the following financial information: a) privately held companies—most recent financial statements; 2) nonprofits—may be asked for most recent financial statements after review of A-133 audit information; 3) publicly traded companies—most recent 10-K SEC filing or annual report.
6. Additional human and/or animal subjects documentation, if applicable.
7. For joint ventures only, a credible draft Joint Venture Agreement (JVA) that must be initialed by each joint venture member acknowledging review and preliminary concurrence. The information below is provided in advance to alert joint venture members of the minimum requirements so that the parties may begin negotiating the JVA early:
 - a. Authorization for the joint venture lead (item 2 of NIST-1022) (the legal entity, not an individual person) to serve as the Joint Venture Administrator to bind all of the other members to the terms and conditions of the NIST/TIP award and to administer the NIST/TIP award on behalf of all of the members.
 - b. Treatment of intellectual property—that is, who will own what, including provisions granting the required licenses to the government and acknowledging the TIP statutory intellectual property rights ownership requirement.
 - c. Agreement that the TIP award terms and conditions take priority over those in the JVA.
 - d. Acknowledgment by the parties of their respective cost-sharing commitment and that no party is responsible for the cost-sharing commitment of any other party.
 - e. Acknowledgment that if a party is removed unilaterally by the NIST Grants Officer, that party is also removed from the Joint Venture Agreement, which may necessitate amendment of the Joint Venture Agreement.
 - f. Provision for a party's withdrawal from the JVA, including immediate notification to the NIST Grants Officer.
 - g. Inclusion within any dispute resolution provision, the parties' acknowledgment that NIST may, at any time, suspend or terminate the NIST Cooperative Agreement.

Upon review and clearance by NIST of the draft JVA, it must be finalized, signed by all joint venture members, and approved by NIST before an award can be made. The JVA must be executed by all parties, and the document should be formatted to include all signature blocks on the same page. NIST requires an intact, fully executed, original agreement, bearing the actual, dated, handwritten ink signature of each JV member. Failure to provide an acceptable, executed JVA by the established due date will jeopardize issuance of an award. An award will not be deferred in order to give more time to finalize a JVA.

A sample JVA and Intellectual Property Plan are available on the TIP website (<http://www.nist.gov/tip/helpful-resources.cfm>). The sample JVA includes important information, however, it is not meant to be the sole JVA model. If a joint venture wants to develop its own JVA, it may do so, provided that the minimum provisions mentioned above are included, and provided that the alternative JVA does not otherwise conflict with TIP requirements. A draft JVA that has not been completed to include the required information will not be accepted. The legal name and contact information of each joint venture member must be provided; include only those organizations to be bound by the JVA.

Before investing a large effort in planning technical work for a joint venture, organizations are urged to obtain a legal review of the sample JVA by all joint venture members. If it appears likely that reaching an agreement to the provisions contained in the sample JVA and Intellectual Property Plan will be contentious, TIP urges you to carefully consider whether the joint venture is feasible. If there are questions, your legal staff may contact the Office of the Chief Counsel for NIST at 301-975-2803.

TIP strongly recommends that the person who signs the proposal submission for the lead organization be someone at a high enough level in the organization to be able to deal effectively with the kinds of legal and policy concerns that are necessary to execute a successful JVA. It is often helpful if this same individual is the authorized signer of the JVA on behalf of the lead organization if the project is selected for funding. This individual must coordinate with top management within his/her own organization and the other participating organizations about their commitment and proposed cost share contribution to the proposed project.

Some issues that are most often raised by organizations' legal counsel in negotiating the JVA include the following:

- a. Who will hold title to intellectual property?
- b. How are the revenue streams to be divided?
- c. What indemnification provisions will be acceptable to all parties?
- d. Who will be the spokesperson for the joint venture?
- e. Who authorizes licensing agreements?
- f. Who handles the billing to NIST and brings issues to NIST's attention?
- g. What will happen during the course of the project if one party drops out and/or another party wishes to join the project?
- h. Who will coordinate writing the quarterly reports to be submitted to NIST/TIP?
- i. Who will track progress against technical milestones to bring issues to the attention of the joint venture and to NIST/TIP?
- j. In what capacity is a government laboratory participating? If as a joint venture member, is the government laboratory willing to execute the JVA? (NOTE: If it is not willing to execute the JVA, the government laboratory may possibly participate as a contractor under a separate agreement (e.g., a CRADA as addressed in Chapter 1 Section B.10) with the Joint Venture Administrator.)
- k. How will disputes be handled should they arise?
- l. How will project expenses be reported by joint venture members to the Joint Venture Administrator for reporting to NIST?