



RFP Comments from SPSE/UPTE

The Society of Professionals, Scientists, and Engineers (SPSE), which is affiliated with University Professional and Technical Employees (UPTE) Local 9119 Communications Workers of America (AFL-CIO), is an independent employee organization representing scientists, engineers, and other professionals employed by the Lawrence Livermore National Laboratory (LLNL).

SPSE offers the following comments on NNSA's draft RFP for the contract for LLNL.

Summary:

1. Extend the deadline for RFP comments until 5 August 2006, the bid award date until December 2007, and the transition period until 1 June 2008. We (and others) have some great ideas and lessons learned from the LANL process but need more time to make them robust. LLNL and LANL are different labs, offering different perspectives but also having different site profiles, as they should be else they would be duplicative. This in turn compels a different RFP.
2. Write the RFP to encourage bids of a different nature from the LANL process. Do not "disallow" an LLC bid, but do not de facto "require" an LLC bid as was done in the LANL process. Given the language in the Pre-Solicitation presentation on "Complex 2030",¹ there is a unique chance for LLNL to move quickly to a site with a much lower safety and nuclear materials security profile than LANL. Expediting the removal of CAT I/II SNM from LLNL, together with a minimal hazard future for Site 300 could make the case for an LLC much less compelling, and perhaps obviate the perceived need for a for-profit style RFP.²
3. Require Pension Reciprocity³ of both the old and new contractors proper. This obviates the need for the confusing "TCP1 vs. TCP2" nomenclature and choice. This will avoid the requirement for employees to transfer their UCRP assets from UC / State of CA to an LLC Start-up company if they hope to retain "substantially equivalent" benefits. In other words, there shall be no requirement or plan to move UCRP funds to TCP1 or any location other than their current location.
4. Require "substantially equivalent" benefits for transferring employees, retirees, and future retirees for the length of the contract, not just one year.
5. Explicitly disallow "At Will" employment status. The LANS employment application, while evading the words "At Will", contains concisely "At Will" language. In a private for-profit firm in the spirit of free market capitalism, "At Will" may (or may not) be a good choice. However, as an NNSA nuclear weapons lab, *the purpose of LLNL is to certify the nuclear stockpile in the absence of nuclear testing*. Examples of the disastrous effects of de facto "At Will" range from Pearl Harbor to Challenger to Columbia, where employees were afraid to bring up known deficiencies for fear of losing their jobs. In our business it is a mistake we cannot make even once, because as recently stated by a Fellow of the AIAA, "If you don't test, you won't know." And we don't test. There are direct analogies to both Challenger and Columbia waiting in the stockpile. To the extent that employees are free to express a diversity of scientific opinion and evidence regarding stockpile certification, we can deal with and preclude these Challenger and Columbia analogies in our stockpile. If "At Will" consumes the nuclear design certification business, we will never know – until perhaps one day when it is too late.

¹ See "Complex 2030" Briefing on the NNSA RFP Website, Slide 17 etc.

² For example, New Mexico Institute of Mining and Technology operates an explosive test facility in a university environment; this relatively low safety and physical security profile could enable non-LLC entities to credibly bid on LLNL with a similar model for Site 300 testing.

³ See "Supporting Comments, Pension Plan" just below

Supporting Comments

Nature of the Contract

The national security mission of the laboratory depends on the quality of the science.⁴ Good science can be done only in an atmosphere that not only allows but encourages open debate and discussion and dissent. A corporate management structure increases the risk that employees will be more hesitant to express diverse scientific opinions and this will have an adverse impact on the quality of the science upon which the national security mission of the lab depends.

Hence, we strongly urge that the RFP for LLNL generate a different contract situation than that of LANL. Privatization of nuclear weapon design and certification is dangerous and completely uncharted water, especially in an era of no nuclear testing. In a truly open, competitive market, there is an argument for privatization and letting the free market forces work.

However, due to the Atomic Energy Act, Security considerations, and other issues, the nuclear weapon certification business is NOT a free market. The current situation for nuclear weapon design certification *without nuclear testing* exacerbates this problem. Unlike open markets with products that are tested regularly, the nuclear certification business is NOT compatible with privatization and free market principles. Therefore we regard the privatization of LANL as an “experiment” in the strategic defense of our nation. One such “experiment” (LANS at LANL) is perhaps worth a try. Betting our only remaining nuclear design certification lab (LLNL) on the same experiment would be irresponsible.

The RFP should be written to allow and encourage non-LLC entities to bid on the contract. To make this more tractable, consider limiting the liability taken on by the new contractor. This could be done with a reduced safety and physical security profile at LLNL vs. LANL, so the contractor liability situation at LLNL is perhaps a closer analogy to Lawrence Berkeley Laboratory (LBL) than LANL. This reduced profile is part of the current NNSA plan and discussed at the Pre-Solicitation Conference in “Complex 2030”.¹

With the new LLNL contractor indemnified much the same as the current UC/LLNL contract, this would make LLNL ripe for a top-end pay scale with the same limits as the Government Service / Executive Service (GS/ES) pay scale. *Removal of the salary spike at the top end of the LLNL scale would be another good counter-experiment to the LANL RFP experiment:* The lower top pay (e.g. \$180K tops vs. \$480K tops) at LLNL might (*or might not*) effect the ability to attract sufficient management quality, but there might also be a beneficial effect during the ethics-intensive era of no nuclear testing; the *monetary* incentive to “climb the corporate ladder” would be gone, leaving only the incentive of *scientific integrity*.

One other modification to the current indemnification structure is needed to ensure credibility of mission performance including nuclear stockpile certification, as well as safety and security. Currently, the contractor (UC) is reimbursed internally ad infinitum and externally nearly so, in terms of resisting the exercise of employee rights. All such costs, internal and external, should be made public (not carried on overhead or G&A etc.) and not reimbursed by NNSA or DOE. This will add balance to the contractor-employee system that has been lacking even under the UC interpretation of CA State law. It may seem to the inexperienced manager (or perhaps those who have only been with a thriving entity of high integrity)

⁴ The credibility of our suspension of nuclear testing hinged on Science Based Stockpile Stewardship, which is premised on exactly the points about scientific integrity embedded throughout these Supporting Comments. We must not risk these basic tenets.

that this part of our proposal would *add* cost. However, by ensuring employee rights and the freedom to raise concerns first internally (and then externally using appropriate channels), stockpile certification, safety, security, and the credibility of other missions are strengthened, and risks and costs borne by the taxpayers are reduced.

To illustrate: Consider the costs - and other consequences - that might have been avoided in Challenger or Columbia if there had been a substantive culture enabling concerns to be raised without fear or oppression. The stakes are much higher in the realm of nuclear weapons. Nuclear design and certification employees need to truly be able to be honest about safety, security, and reliability, especially in an era of no nuclear testing coupled with world tensions. Rhetoric will not get the job done – these rights must be backed by State and/or Federal Law. Hence, this change to the RFP is needed; the record has been poor even under the UC interpretation of CA State law, and a new RFP with the potential for privatization will make the situation worse and resultant costs to the taxpayer even higher.

These actions together would not only mitigate risks to the stockpile by having two nuclear certification labs of a truly different nature, but it could save the NNSA, DOE, and the taxpayers significant money.

Pension Plan

The RFP shall specify and require both the current contractor (UC) and the new contractor to provide fully for pension “**Reciprocity**.” By “Reciprocity,” we mean the well-accepted and successful transition practice where a full pension is guaranteed from both the old and new contractor, based on the employee’s final retirement age and total years of service. This effectively generates a “double” full pension. This “double” benefit amount is then scaled by the number of years of service with each contractor, divided by the employee’s total years of service, to sum to a fair and equivalent “single” full pension, with the obligation for each part borne by the contractor during those years of employment.

Given the sincerity of substantial equivalence as promised, “reciprocity” should not involve significant added costs. However, in exchange for reciprocity, we suggest that more freedom be allowed to both the employees and contract bidders in terms of the “new” pension plan. Bidders should be enabled (perhaps required) to offer both a DC and DB plan in partnership with the current contractor (UC) obligation for retaining reciprocity from the existing UCRP pool (no separate UCRP pot for LLNL retirees or future retirees). Instead of trying to viewgraph-engineer “substantial equivalence” of the new contractor’s DB and DC plans, let the employees choose one or the other, without having to make other de facto choices at the same time which may not have “substantial equivalence.”

Employee Rights

Existing collective bargaining units shall be recognized and existing collective bargaining agreements shall be honored. There shall be no layoffs or probationary periods for transitioning employees. The contractor shall create programs, for *all*⁵ employees to meet federal and state laws concerning employee human rights, nondiscrimination, diversity, health and safety, labor relations, a complaint resolution process with binding arbitration, whistleblower protection and workforce restructuring. California State rights as California Public Employees shall continue with the provisions of the Higher Education Employer-Employee Relations Act (HEERA) implemented. This includes the continuation of due process rights under Skelly and Weingarten. All of these rights and provisions should be spelled out specifically in the RFP.

⁵ To include all categories of current UC/LLNL employees: Indeterminate, flex-term, and Key Personnel

The following or similar language (as taken from the LANS employment application form) should be prohibited from use by the new contractor, and this prohibition should be spelled out in the RFP:

“The employment relationship with Los Alamos National Security, LLC at Los Alamos National Laboratories is by mutual consent. This means that employees have the right to terminate their employment at any time and for any reason. Likewise, LANS reserves the right to discontinue employment. I understand that LANS will take employment actions, consistent with its policies and procedures, as it deems necessary in its determination to establish and maintain a workforce of the size and capabilities required to achieve its mission and business objectives. I understand that, if I accept the offer of employment, I will be subject to these policies and procedures, which may change from time to time. Further nothing in these policies and procedures is intended to create an express or implied contract for employment. No promise or guarantee modifying the nature or terms of my employment will be binding upon LANS unless made in writing by the President of LANS.”

This blatant “At Will” language, while evading the actual words “At Will,” is a nuclear weapons recipe for disaster, with consequences similar to those of Challenger and Columbia – only magnified many times over.

Schedule for RFP and Transition

- Extend the comment period on the RFP by 2 months to truly allow ideas like these and others to be considered in coherent form
- Extend the contract award date until December 2007⁶
- Extend the end of transition and full startup until 1 June 2008 (2 years after the LANL startup) to enable at least a partial “lessons learned from LANL” period

⁶ The award date in the RFP is poorly timed for another reason: It predates the 30 September 2007 submission of a National Academy of Science (NAS) study requested by Congress (in H.R. 5122) on methodologies for certification of the current and potentially new future stockpile. This study should be completed and considered by both bidders and the selection officials so that current and new contractors can comment and offer their potentially different concepts for the nuclear stockpile and its certification – still the major mission of LLNL. **Our proposed award schedule** would enable this NAS study to enter into the selection process, making for a more thorough consideration of science and technology by the bidders, and with a **double return on the taxpayers’ money**.