

Comment on:

The U.S. Department of Energy's (DOE) Draft Request for Proposals (RFP) for the contract to manage the Lawrence Livermore National Laboratory (LLNL)

Submitted to Contracting Officer, DOE National Nuclear Security Administration (NNSA) Source Evaluation Board at: LLNLCompetitionHelp@doeal.gov

Submitted by:

Tri-Valley CAREs (Communities Against a Radioactive Environment)

2582 Old First Street, Livermore, CA 94551

Tara Dorabji, Outreach Coordinator

www.trivalleycares.org, tara@trivalleycares.org

Submitted:

June 5, 2006

Tri-Valley CAREs offers its comment and requests the following additions, clarifications and/or changes to the Draft Request for Proposals for the competitive selection of a management and operating (M & O) Contractor for LLNL.

We appreciate the opportunity to comment and request that a version of the final RFP be released with tracked changes. We look forward to receiving the final RFP and seeing our recommendations incorporated.

Award Term—Provision to Extend Contract for up to 13 Years:

This is the first contract to be "let" through an open and competitive process since the University of California began managing the Lawrence Livermore National Laboratory (LLNL) site in 1952. In this context, the provision to permit extension of the first openly bid contract for incremental periods up to 13 years beyond the initial 7-year term is inappropriate. Practically speaking, this provision means twenty years could pass before there would be a second opportunity for an open process.

Tri-Valley CAREs seeks to ensure that workers, communities and the public have an opportunity to comment on and influence the provisions of the contract and the selection of the Contractor. Twenty years is too long to wait for a second comment opportunity. Therefore, we ask that this provision be deleted in its entirety.

Improving Health and Safety Provisions for Workers and Communities:

Under present management, there has been extensive soil, groundwater and airborne contamination at the LLNL main site and at its Site 300 high explosives testing range. The LLNL main site was placed on the federal Environmental Protection Agency's

(EPA) “Superfund” list of most contaminated sites in the country in 1987. Site 300 was named to the “Superfund” list in 1990. In both cases, LLNL was named by EPA as the responsible party. Contaminants found above regulatory limits in soil and groundwater include chemical pollutants like TCE, Freon and perchlorate, radioactive pollutants like tritium and uranium and high explosive compounds like RDX. Additionally, plutonium was removed from LLNL main site soils.

Workers have been contaminated at LLNL main site and site 300; some have become ill and died as a result of their exposures. In this context, we ask that the RFP disallow any M & O Contractor from using a non-profit status to shield itself from paying fines for health and nuclear safety violations under the Price-Anderson Act. At a minimum, the RFP should state that the Contractor, if non-profit, would be liable for all fines up to the dollar amount of the management fee (including bonuses).

Under the section on the conditional payment of fee, profit and incentives—facility management contracts, the RFP should add provisions to further protect community and worker health.

For example, the RFP should mandate fee reductions if the Contractor does not provide records and assistance to former employees, current employees, or family members of employees who are filing under the Energy Employees Occupational Illness Compensation Program Act.

In addition, fee reductions should be instituted if the Contractor, its workers, regulatory agencies and/or the community document any increase in hazardous and/or radioactive releases from the LLNL main site or Site 300 – or if any radiological or toxic deposits above regulatory standards from LLNL are found in the surrounding community. In addition to a fee, the RFP should specify the Contractor is responsible for immediate remedial activities, to a level to which the regulatory agencies and the community agree.

The RFP should be rewritten to state that the Contractor will allow and facilitate inspections by state and federal OSHA officials, at least annually (not merely OSHA-like inspections, but OSHA). The RFP should be rewritten also to encourage the Contractor to provide additional training for workers in order to reduce work-related accidents.

With regard to compliance issues, such as the cleanup of pollutants already in the environment, the RFP should be rewritten to limit the definition of “force majeure,” and proactively commit the Contractor to remediate soil and groundwater at the LLNL main site and Site 300 in a manner that meets all milestones and commitments under the Superfund Law (CERCLA).

Strengthening "Whistleblower" Protections :

Under present management, employees who "blow the whistle" on safety problems, security lapses, lack of environmental protection, fraud, discrimination and other instances of mismanagement or failure to conform with the law have suffered retaliation.

Unlimited amounts of tax-payer money have been spent by the M & O Contractor to fight workers' legitimate claims. Often, the underlying problem goes unaddressed. The RFP should be rewritten to require that the Contractor establish a Whistleblower Protection Ombudsman, who will promote a culture that values safety by supporting and protecting the rights of Whistleblowers.

In addition, for the Laboratory Operations evaluation criterion, section (3) of the RFP should be rewritten to specifically mandate that part of "institutionalizing a nuclear safety conscious culture requires" the protection of Whistleblowers. Tri-Valley CAREs also asks that the RFP be rewritten to place a "cap" on the amount of federal money the M & O Contractor can be reimbursed for fighting whistleblower claims.

Ensuring Workers' Right to Organize and Other Employee Rights

Under current management, the "environment" has not been friendly to unions or to workers' rights more broadly. The RFP should be rewritten to include an alternative complaint resolution process for employees. In this regard, the "Hanford Joint Council" could serve as a reference point. Tri-Valley CAREs received a briefing on the Hanford Joint Council's structure and operation some years back, and, while far from perfect, it appeared to be light years ahead of what exists at LLNL today. The RFP is the appropriate vehicle for institutionalizing these types of positive change.

Past Performance

The past performance evaluation component of the RFP should be strengthened to include a comprehensive safety and health performance review. One method to accomplish this would be to assign an additional 300 points in this category to evaluate any Offeror whose team members have held a DOE contract in the last ten years. This should be "weighted" so that Offerors whose team members have held no DOE contracts in the past 10 years will not be favorably or negatively impacted.

Moreover, the final RFP should request operating contracts performed for the DOE for the past ten years, not merely the past five years. In addition to the information presently required for each DOE contract, the Offeror should be required to compile a list of any and all fines that were assigned by DOE or another agency for violating environmental, safety, health or other contract operations at a DOE site. This includes any fines levied but not paid, e.g., as presently occurs under Price-Anderson when the Contractor is a non-profit. This record should be reviewed and be a significant part of the criteria for the past performance safety and health evaluation.

Salary Caps

The RFP sets a maximum cap on reimbursable compensation for each of the Contractor's key personnel at \$473,318/yr. Tri-Valley CAREs believes that this amount is excessive and that it should be reduced. We suggest a "cap" at or around \$250,000/yr.

Conflict of Interest

The organizational conflict of interest disclosure should be strengthened. The RFP should require Offerors to disclose any past—within the past 5 years (not 12 months), financial, contractual, organizational, or other interests relating to the performance of the Statement of Work. Further, this should be required for all partners (e.g., of a LLC), parent companies and their key personnel.

Science and Technology Evaluation—Increasing Unclassified, Civilian Science Initiatives

For FY 2006, about 85% of the LLNL budget from DOE is allocated to weapons activities. Energy conservation amounts to less than one percent. The RFP should be rewritten to include mechanisms and incentives for the M & O Contractor to increase the unclassified, civilian science programs at LLNL.

The selection criteria for Science and Technology in the RFP needs to be written to allow LLNL to remain competitive into the next decade by expanding its commitment to civilian sciences. The selection criteria for Science and Technology should be further modified by preserving and emphasizing the importance of unclassified scientific research at LLNL. For example, the assessment criteria should be rewritten to read:

(1). Fostering an environment of scientific skepticism and peer review of research programs, including by increasing unclassified work.

(2)Advancing science, with a focus on civilian sciences, through technological innovation, public and private center collaboration.

(3) Promoting integration throughout the Nuclear Weapons Complex to identify and halt duplicative and unnecessary work, halt the production of waste without identifying sustainable, long-term disposition, identify remediation technologies that are transferable and recognize and halt practices which compromise the health and safety of workers, the community and the environment.

(4)Achieve world class science by expanding civilian sciences research on clean, renewable energy technologies, global warming and energy conservation technologies. Integrate world class science and technology with laboratory operations, business operations and laboratory management.

In general, we ask that the RFP be written to allow specific, extra points to bidders whose management proposals contain a detailed plan to attract more unclassified, civilian science to LLNL. Further, the performance bonuses should be rewritten to incentivize civilian science activities. One concrete method (among many) might be to offer bonuses to the Contractor for increasing the number of scientific articles LLNL employees are able to publish in open, peer reviewed journals each year.

We further ask that the RFP include a provision that would mandate creation of a diverse stakeholder committee whose charge would be to offer LLNL researchers and the Contractor input on LLNL program proposals. Such a committee would contribute positively to the goals of “democratizing science.” The group must have broad representation, including “watchdog” organizations, First Nations, community members, independent scientists and others. Participation in the committee should be open to all interested parties. In this manner, research proposals could be broadly evaluated to ensure that federally funded science is relevant to the public whose money it uses. This process, which should be spelled out in the RFP, would assist the Contractor in encouraging, prioritizing and attracting additional high-quality, unclassified, civilian science programs – and in keeping existing personnel and attracting the new researchers as needed to conduct the programs.

Bringing the LLNL Mission and Programs into Conformance with International Treaty Obligations and Relevant UN Decisions

According to the U.S. Constitution, all "treaties made," along with the Constitution itself, comprise the supreme law of the land.

The RFP should be adjusted so that the Contractor must include compliance with international treaties as a component in the Performance Evaluation Plan. Failure to comply, or actions that undermine international treaties shall result in a reduction of the Performance Incentive Fee. In this regard, we note that some of the current practices at LLNL undermine international treaty obligations.

Additionally, the Scope of Work in the RFP should be modified to mandate strict compliance with international treaty obligations. Areas where the Scope of Work could be contrary to U.S. treaty commitments should be eliminated, or rewritten to limit the scope of those programs.

Finally, the section in the RFP on Inspections of Research and Development should be augmented to include the rights of international weapons inspection teams to inspect facilities as required by treaty and/or advised by the United Nations.

(A) The International Non-Proliferation Treaty:

The nuclear Non-Proliferation Treaty (NPT), which the U.S. ratified and which entered into force in 1970, states that nuclear weapons states must "pursue negotiations in good faith on effective measures relating to the cessation of the nuclear arms race at an early date and to nuclear disarmament"

The International Court of Justice has ruled that the NPT compels the nuclear weapons states that are signatories to bring those negotiations to a conclusion, i.e., to achieve disarmament. The New Agenda Coalition, an influential group of signatory nations to the NPT states: "Any plans or intentions to develop new types of nuclear weapons or

rationalization for their use stand in marked contradiction to the NPT, and undermine the international community's efforts towards improving the security of all states."

The Draft RFP states that the M & O Contractor will "reestablish, maintain and enhance manufacturing and other capabilities needed for the future production of weapons." Further, it specifies a long list of nuclear weapons activities the Contractor is to undertake. LLNL has historical and proposed work developing new and modified nuclear weapons (e.g., researching "more usable" mini-nukes, variable-yield nuclear earth-penetrators, so-called Reliable Replacement Warheads, and other advanced weapons concepts); enhancing readiness to conduct a full-scale nuclear test in Nevada; and, developing new plutonium pit manufacturing techniques. These and other programs currently underway or planned at LLNL may very well contradict the NPT and/or weaken or complicate its underlying non-proliferation regime.

Moreover, the RFP must be rewritten to explicitly emphasize the primacy of U.S. treaty obligations. The RFP should require Contractors to outline in the Performance Evaluation Plan a detailed analysis of treaty compliance or lack thereof on an annual basis. The group undertaking the analyses must have incorporated within it an unclassified committee and an agreed upon set of individuals with clearance to ensure that the unclassified briefings given this committee are in conformance with any classified findings. The resulting analyses must also include unclassified, published reports.

We note, too, that the Draft RFP states that the Contractor shall "perform R&D for nuclear security, nonproliferation of weapons of mass destruction (nuclear, chemical and biological, and of missile delivery systems) and treaty verification technologies." Nuclear weapons activities at LLNL, including the "stockpile stewardship" program, the Reliable Replacement Warhead (RRW) program and all other weapons activities must be analyzed for conformance with the mission to support "nonproliferation of weapons of mass destruction (nuclear, chemical and biological, and of missile delivery systems) and treaty verification technologies and respond to proliferation of weapons of mass destruction." We note that many of these programs contribute directly to "vertical" proliferation (that is what they are intended for) and only slightly less directly to horizontal proliferation.

The fact that some parts of LLNL's mission may contradict, and/or substantially complicate, other parts of LLNL's mission should be addressed in the RFP.

On NPT Compliance and a Curatorship Approach to the Stockpile

Tri-Valley CAREs asks that the above-listed contradictions be eliminated by rewording the Scope of Work so that the "stockpile stewardship" program and any work to be conducted under the RRW program in the RFP are limited to a "curatorship" of the existing arsenal as it awaits disarmament.

In short, a curatorship program at LLNL (or throughout DOE) would rely on surveillance and nonnuclear testing to determine when repairs are to be done. Only when there is compelling evidence that key components have degraded, or will soon degrade, would

replacing parts be undertaken. All new components would be remanufactured as closely as possible to the original design. "Modernization" and "upgrades" would not take place under the guise of curatorship as they do under the current stockpile stewardship program (indeed, they are the unstated goal of the program).

While curatorship is not in and of itself disarmament, as is called for under the NPT, it could support disarmament goals and obligations. At a minimum, it would not contradict our disarmament obligations by engaging in the design of new and modified nuclear weapons, as is currently the case.

(B) The International Biological Weapons Convention:

The RFP must emphasize the necessity of conformance of the biological sciences mission at LLNL to the Biological and Toxin Weapons Convention (BWC).

The BWC was signed in 1972 and entered into force in 1975. It compels signatories to forgo developing or producing biological agents or delivery vehicles of types or in quantities for other than strictly peaceful purposes.

LLNL plans to operate an advanced biowarfare agent facility, or BSL-3, on site. According to DOE and LLNL documents, there are plans to use the facility to modify select agents (those historically associated with bioweapons). Genetic modification of potentially deadly bioagents is inherently a "dual use" activity (can be used for defensive or offensive purposes). The RFP is silent about this activity and its potential implications for either contradicting the BWC or weakening efforts to negotiate verification and enforcement protocols for it.

Parallel to provisions regarding the NPT, Tri-Valley CAREs asks that the RFP be rewritten to emphasize the primacy of U.S. treaty obligations under the BWC as well. The final RFP should be adjusted so that the Contractor must include compliance with this treaty as a component in the Performance Evaluation Plan. Failure to comply, or actions that undermine the treaty shall result in a reduction of the Performance Incentive Fee.

The Scope of Work in the final RFP should contain language that limits the bioscience programs at LLNL to on-site BSL-2 activities that do not conflict with or potentially weaken the BWC. Certain BSL-3 activities for defensive purposes can be carried out by LLNL researchers at CDC labs, as is currently the practice.

Finally, the RFP should proactively foreclose the operation of a BSL-4 facility on the LLNL site, including at Site 300 (for which the present Contractor, the University of California, and partners have submitted an "expression of interest" to operate a BSL-4 that could include experiments with Ebola and other diseases for which there is no known cure).

(C) The Decision of the United Nations Committee on the Elimination of Racial Discrimination:

On March 10, 2006, the United Nations Committee on the Elimination of Racial Discrimination issued a decision that strongly urged the United States to "freeze", "desist" and "stop" actions being taken or threatened to be taken against the peoples of the Western Shoshone Nation. In its decision, the UN stressed the "nature and urgency" of the Shoshone situation, informing the U.S. that it warrants immediate attention under the Committee's Early Warning and Urgent Action Procedure. Included in the actions that the United States is urged to stop are activities at the Nevada Test Site. Western Shoshone rights to the land—which they continue to use, care for, and occupy today—were recognized by the United States in 1863 by the Treaty of Ruby Valley.

In light of the decision issued by the United Nations, the Scope of Work for the LLNL management contract should be modified to eliminate nuclear weapons activities at the Nevada Test Site by the LLNL Contractor, since these activities would be contrary to the UN decision.

Activities that should be eliminated or modified to comply with the UN decision include:

Conducting experiments including hydrodynamic tests at Site 300 and the Nevada Test Site; p. 207

The Contractor shall operate the Device Assembly Facility (DAF) located at the Nevada Test Site and conduct research and support activities related to NNSA's Stockpile Stewardship Program, including test readiness and assembly of subcritical experiments at the facility; p. 211

In cooperation with the Nevada Test Site Contractor, operate the Joint Actinide Shock Physics Experimental Research (JASPER) gas gun to conduct research in material physics.

In addition, Section 3.6 on Environmental Management should be amended to add that all LLNL Contractor-controlled cleanup decisions should be made to meet standards that are acceptable to the Western Shoshone Nation.

Increasing Openness and Accountability:

Tri-Valley CAREs believes that the bidding process and resulting management contract should have an emphasis on involving all stakeholders, in part by incorporating their input into decisions about LLNL activities, policies and preventive measures. In that context, we appreciate this opportunity to comment on the Draft RFP and encourage continued openness and transparency in the bidding process.

The Special Contract Requirements in the RFP should add an extra provision requiring openness and accountability. It should specify the importance of the Freedom of

Information Act (FOIA) and require Contractor compliance. All records should be "born" subject to FOIA and should only be withheld in very limited circumstances, as provided for in the FOIA itself. The RFP needs to reflect this. NNSA's oversight plan should ensure that Contractor fully complies with FOIA.

In addition, the Special Contract Requirements should have an additional section requiring public accountability. It should have a provision requiring that all unclassified committees at LLNL meet in unclassified areas to allow for public participation. In the biological sciences arena, LLNL has an Institutional Biosafety Committee that meets in a classified area, prohibiting public and community oversight. The final RFP should reflect mechanisms that will enhance public accountability and openness.

In the Community Involvement and Outreach section of the RFP, there should be included specific provisions for ensuring true involvement. To give but one example, the RFP should commit the Contractor to provide public meetings in affected communities on cleanup of pollutants at LLNL main site and Site 300 after the Superfund Record of Decision (ROD) is in place. At present there are no planned mechanisms for continued public participation beyond the ROD at Site 300 and public participation at the LLNL main site is receiving dwindling-to-little Contractor support.

Conclusion:

Again, we appreciate this opportunity to comment and we look forward to seeing real improvements and changes incorporated into the RFP based on our comments and those submitted by other groups and individuals. We ask that the final RFP be issued with tracked changes, to see where any changes were made. We ask, too, that the selection committee that evaluates the bids be expanded to include California workers, independent scientists, community stakeholders, First Nations and watchdog organizations (excluding bidders, of course).

Sincerely

Tara Dorabji
Outreach Director
Tri-Valley CAREs