

To: Tyler Przybylek, Chairman of the Source Evaluation Board
From: Coalition for LANL Excellence (CLE)
Subject: Additional Concerns and Comments on the draft Request for Proposal (RFP) for the LANL Contract
Date: January 21, 2005

First, we want to again thank both you and Robert Archuleta for coming to Los Alamos to meet with the more than five hundred people who came to hear your comments regarding the status of the draft RFP. You certainly demonstrated your dedication to this process and your concern for the feelings of those affected by this competition by spending nearly three hours answering questions from this audience on a Sunday in the middle of a three-day Federal holiday. This helped to alleviate part of the stress within the community resulting from the RFP process and, in particular, from some of the present wording in the draft RFP. As the closing date for submitting comments and concerns is now upon us, we want to raise some additional concerns and offer some additional comments within the established deadline. We hope you will consider passing along any further constructive comments we may gather to the Benefits Panel you have assembled, as a number of people have been looking in detail at specific examples of how the transition could affect their pension and other benefits.

The coalition that has formed includes representatives of the Laboratory Retiree Group (LRG), the Retired Public Employee Association (RPEA), the Democratic and Republican parties of Los Alamos County, the University Professional & Technical Employees Union (UPTE), as well as individuals who are retired or active Los Alamos National Laboratory employees. We hope also to soon involve members of the local business communities and the public, both on and off 'the hill', not only to help ensure that this process results in a continuation of the excellent science that has characterized Los Alamos in the past, but to see to it that the Laboratory continues to have a positive impact on the economy and quality of life of Northern New Mexico by promoting greater involvement with schools and community groups, as well as 'family-friendly' policies in the workplace. As may be evident, the goals of this group extend beyond the immediate question of the RFP, but our near-term attention is focused on making sure that the RFP does nothing to harm LANL excellence, which stems from workforce excellence. Superior benefits are key to recruitment and retention of a superior workforce. The coalition has reviewed these comments and the present members are in substantial agreement with what is submitted herein. Some of the changes requested are ones that you had indicated are already planned for inclusion in the final RFP, whereas others arose from questions at your meeting, the meeting held with Congressman Tom Udall the following day, and from comments we have received since then.

It was clear from the questions at the meeting with Congressman Tom Udall (as reported in the Northern edition of the Albuquerque Journal on January 18) that despite your assurances the previous day, many people still felt deeply concerned about the possible future implications of some of the wording of the draft RFP. We hope that the statement

you indicated would be released on your web site will help to allay these concerns and we request that you seriously consider the following changes to the RFP:

1. Provide that all employees, with the exception of key management personnel, automatically become part of the workforce of the successor contractor, regardless of whether they choose to freeze their UCRP pension benefits by terminating with UC and becoming inactive members of UCRP

At the January 16th meeting, you discussed the options a present employee might exercise as to continuing on with the successor contractor, and the possible choices with regard to their present UCRP pension benefit. One option you discussed was that a current employee could elect to terminate and 'freeze' their present UCRP pension benefit. They would then have to individually meet with the successor contractor to negotiate whether or not they would be picked up, at the option of the successor contractor. During the meeting Chris Chandler made a most penetrating point--with potentially devastating consequences to minorities within Northern New Mexico--that we did not pick up on sufficiently at that time. If a highly competent technical staff member chose the option to terminate from the UC system and 'freeze' their UCRP pension benefit, they would stand a high probability (because of their almost unique qualifications) to be retained by the successor contractor. However, valuable employees who are not high-level technical staff members (e.g., who are in the business and support side of the Laboratory), might fear that they stood a significantly reduced probability that the successor contractor would retain them in the workforce if they chose this option. This puts them at a potential disadvantage in choosing to retain their UCRP pension benefits. It also could place a bias in reducing the present workforce along minority lines, since the less highly technical positions within the Laboratory have a higher proportion of women, Hispanic and Native Americans compared to the technical staff positions.

This scenario would lead to a situation of preferentially favoring the male, white, highly educated (quite mobile) population within the present Laboratory workforce. This was precisely the situation that occurred a number of years ago in the infamous Laboratory Reduction in Force, and to which our Congressional delegation raised serious objection. We are, therefore, requesting that all non-key management Laboratory employees who choose the option of terminating from the present UCRP system (not those who choose to retire), be automatically carried over to the successor workforce, just as they would have been if they had chosen not to terminate from the UC system. We recognize of course that they would then accrue benefits with the successor contractor as if they had just hired on as a new employee. We urge, however, that in either case accrued vacation and sick leave benefits should also transfer intact. Previous UC employees should not face starting out with a reduced number of yearly vacation days and/or, as in many cases, a very large number of accrued sick leave days. Under the present UCRP benefit plan accrued sick leave is counted toward years of service credit when a person retires, it does not count if a

person terminates. Thus the transition of sick leave to a successor contractor has additional financial consequences.

We realize that the case of employees who choose to retire from UC and to start receiving their UCRP benefits would have to be treated differently because of concerns about 'double-dipping.' A restriction would almost certainly have to be placed on the number of days they could work in a year should the new contractor find that their services are necessary, just as they now are in the case of UC. What might be considered, however, is that this number of days should be dependent on the level of benefits received, since some of these retirees might be receiving much less than they could eventually have received.

Implementing these suggestions would go a long way to allaying fears that are still rampant in the workforce and help in the retention of a workforce that will lead to a smooth transition in the operation of the Laboratory should a new contractor be selected. It would also reduce a burden on the new contractor in maintaining Laboratory operations during this transition.

2. Remove the 105% cap on overall benefits

After listening to your and Robert Archuleta's remarks during your visit on January 16th and the response from the audience, we believe this overall benefit cap approach is causing a great deal of unnecessary concern and anxiety. It would seem that the contracting authority could work with the successor contractor to examine reasonable benefits in comparison to others, in much the same way compensation comparisons are presently done at the Laboratory. We are not aware of any formal statement of a compensation cap in the present contract. Yet we believe the Laboratory has been able to work within a reasonable framework with both the Department of Energy and the present contractor to maintain competitive compensation. This benefit cap phrase, perhaps more than any other item in the present draft of the RFP, could produce a widespread exodus of key personnel from the Laboratory and almost assuredly will make it difficult to attract and retain the 'best and the brightest' required to complete our mission. The UCRP benefits programs have been a major contributor to the recruitment and retention of a highly-qualified and respected staff who have devoted their lives to the safety and security of the nation and to the advancement of many technologies important to its growth, often at the expense of making their own scientific careers subordinate to the requirements of classification. We believe that a superior benefits package is vital to the continued recruitment and retention of such people.

The perception of many is that the pension benefit is in particular danger because of the proposed cap, because it is not in line with the group selected for the Ben-Val comparison. As far as we know, this group did not contain other universities, which

are more likely to have maintained substantially equivalent defined-benefit packages. The UCRP has been particularly noteworthy in managing its assets without requiring excessive costs from DOE. It might be more acceptable if the wording of the RFP were changed to reflect the cost of the overall benefits, rather than the benefits themselves, if any wording must be present regarding limits on the benefits. We remind you that the present contract with UC states in H.008: Pension Plan

“(f) Contract termination and selection of a successor contractor

(4) DOE agrees to require that, in the event of a termination of work under the contract, a successor contractor shall permanently maintain the benefit accrual terms and conditions of UCRP for the Contractor employees transferred to the successor contractor insofar as UCRP is consistent with the provisions of applicable law.”

We do not believe the cap is consistent with this statement in our present contract and could form a basis for a legal challenge to any contract awarded with this provision.

3. Provide a 60 day window for benefit comparison

Our understanding of what you said at the January 16th meeting is that a 60 day window will be provided during which present employees will be able to compare their present pension benefit under UCRP with the pension benefit that they would receive from the successor contract if they transferred directly over to the successor contractor with their present pension benefit accrual under UCRP. We ask that such a provision be provided in the RFP.

4. Redefine the nature and the distribution of award points of the evaluation criteria

We are aware of the input submitted on January 6 by UPTE to you and feel that their comments regarding the importance of the relative weighting of ‘past performance’ vs ‘oral presentation’ is an important one for your consideration. We also believe that the overall benefits package proposed by the successor contractor should be an important part of the scoring process and should be given award points commensurate with its importance in maintaining the Laboratory workforce excellence. We are pleased that some of our Congressional delegation have already gone on record supporting this inclusion in the final RFP.

5. Refine the nature of the role played by the Contracting Officer

With our limited (at this point) legal understanding of the nature of the role played by the Contracting Officer, we have serious concerns that too much discretion is left solely to the Contracting Officer. An example of this is the wording contained in Section H-36-(d)-(1) which occurs on page 36 of the draft RFP

“Comparability shall be determined by the Contracting Officer in his/her sole discretion.”

We would certainly hope that issues concerning comparability of Salary and Benefits (Section H-36-(d)), would have a broader forum than leaving it to the sole discretion of the Contracting Officer. There is widespread concern about the use of the word ‘comparable’ rather than ‘substantially equal.’ We also believe that this clause may

be a deterrent to potential bidders who may feel that they cannot sign a contract that can be changed at one persons' sole discretion

6. Removal of the paragraph H-37-(e)-2-iii which appears at the top of page 48 in the draft RFP

We understand that you agreed at the January 16th meeting in Los Alamos to remove the paragraph H-37-(e)-2-iii which appears at the top of page 48 in the draft RFP:, viz.

“Notwithstanding the provisions of this paragraph (e), the Parties further agree to consider the desirability of covering pensioners, survivors, UCRP disability recipients, and terminated vested and nonvested members under a successor plan.”

We are asking in this submittal to be assured this paragraph will be removed.

7. Provide a statement within the RFP that will assure that substantially equivalent retiree healthcare will be continued under the successor contract

We believe you also agreed at the January 16th meeting in Los Alamos to provide a statement within the RFP that will assure that substantially equivalent retiree healthcare will be continued under the successor contract. We are asking that the RFP contain such an assurance. It appears that some retirees might prefer to stay with a plan administered within California by the University of California that provides national coverage. We ask that you consider exploring with UC the possibility of such an arrangement that would give retirees the ability to choose which option they prefer after reviewing the health plan offered by the successor contractor.

8. Provide a provision for UCRP benefit retention should UC win as part of a consortium

There has been a recent indication that UC may choose to partner with an industrial contractor. We believe there would be an almost universal consternation if such a consortium were to win the bid, but provisions in the RFP were to force a change in the present benefit relationship with UCRP. This would raise all of the concerns discussed above about how benefits would be retained in such a transition. Should such an event occur it would be desirable that present employees would retain their UCRP benefit.

In the most recent discussions within the coalition, several additional concerns with the draft RFP were also identified, but because of the complexity of issues and/or possible legal ramifications involved in these issues, we cannot adequately respond within the time formally remaining. We hope however to submit additional input regarding these important issues later for your consideration.

Many of us have spent our entire, or nearly entire, professional and personal lives at the Los Alamos National Laboratory and have come to recognize the uniqueness of this Laboratory. We believe we most truly understand what it takes to recruit and retain the quality of personnel required to attack problems of a global challenge. If the Laboratory is deemed expensive to operate, it must be measured by the productivity and nature of the problems it has addressed in the past, and shall continue to address in the future.

Submitted this day by:
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on behalf of
the Coalition for LANL Excellence