Contractor Human Resources Issues
Lawrence Livermore National Laboratory (LLNL)

Introduction: The NNSA Source Evaluation Board (SEB) has received questions from Lawrence Livermore National Laboratory (LLNL) employees about clause H-35, Workforce Transition, Contractor Compensation, Benefits and Pension, in the Request for Proposals (RFP) for management and operation of LLNL. This paper is intended to address the issues raised in the questions. Related questions were binned into categories and answers for each category are provided below. When it was not possible to bin a question into a category, it was included under "Miscellaneous" below along with the response to the question.

Solvency of Pension Plan One Under the New Contract

The current LLNL contract (W-7405-ENG-48) provides that all employees of the contractor eligible to participate in the University of California Retirement Plan (UCRP) are covered by UCRP and that each employee's benefit rights are subject to the terms and conditions of the UCRP. Neither the contractor nor the government may cut back employee rights to accrued benefits under the UCRP. In the event of termination of the current contract and selection of a successor contractor, the current contract provides for the transfer of assets to a successor plan. Consistent with the RFP, the new contractor will have the responsibility to sponsor and fund Pension Plan One as that plan is described in the RFP. Under the RFP the government will also have the obligation to reimburse the allowable costs of the employer's contributions to Pension Plan One in accordance with applicable legal requirements.

The current contract provides that retired LLNL employees, including those LLNL employees who retire before the expiration of the current contract, will remain in the UCRP. The University of California (UC) will continue to sponsor the pension benefits under the UCRP for LLNL employees who are retired as of the expiration of the current contract.

Assets of qualified pension plans, such as Pension Plan One, are statutorily required to be held in trust for the exclusive benefit of the participants and beneficiaries of the plans by a fiduciary that is legally responsible for the management and administration of the plans. Pension Plan One under the new contract will be insured by the Pension Benefit Guaranty Corporation (PBGC). NNSA is unaware of any instance in which DOE or NNSA contractor employee benefit plans have required PBGC intervention to ensure that plan participants received their vested plan benefits. The RFP includes provisions that will require the new contractor to consider amending Pension Plan One and other benefits for Transferring Employees to be consistent with any changes made by UC to the UCRP during the term of the new contract.

Employment Options for Employees

The RFP provides the incumbent workforce (other than retiring employees) with certain preferences in hiring. The RFP specifies that the new contractor will offer employment to all current LLNL Career and Term employees, as defined in the RFP, other than Key

Personnel and retiring employees. Transferring Employees are to receive a substantially equivalent total compensation package of pay and benefits compared to that provided by UC under the current contract. Employees can choose to retain their interest in the UCRP (as inactive vested participants) and still be guaranteed their jobs with the new contractor. Inactive Vested Transferring Employees will be offered the same total compensation package as that provided to New Employees under the new contract.

Pension Plan One Provisions

Pension Plan One will not offer benefits that were not available under the UCRP, for example, credit for military service time prior to employment at UC.

If the new LLNL contractor is a private sector employer, its employees will be required by federal law to participate in the Social Security system and hence to pay Social Security taxes effective the date of contract award, which currently is anticipated to be October 1, 2007. The new contractor for the Los Alamos National Laboratory (LANL), Los Alamos National Security (LANS), is designing the LANL Pension Plan One to address these matters and implement the requirement that it provide a substantially equivalent package of pay and benefits to that provided under the prior LANL contract. The new LLNL contractor will similarly be required to develop a Pension Plan One for LLNL Transferring Employees that is part of a substantially equivalent package of pay and benefits.

DOE/NNSA retains the right to approve Pension Plan One and any changes
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%3_ider amending Pension Plan One and other benefits for Transferring Employees consistent with any changes made by the UC Board of Regents for UC employee benefits during the term of the new contract.

DOE Notice 351.1 – Contractor Pension and Medical Benefits Policy

DOE Notice 351.1 was suspended as of June 19, 2006, for one year while the Department consults with stakeholders, including Congress, to solicit their views of the issues addressed in the policy. A copy of the suspension notice (DOE Notice 251.66) can be found at "www.directives.doe.gov." The LLNL RFP reflects the one year suspension.

Substantially Equivalent Benefits

As noted, the LLNL RFP requires the new contractor to provide a total compensation package for Transferring Employees that is substantially equivalent to that provided by UC under the current contract. The determination of reasonableness for cost reimbursement of benefits for Transferring Employees will not be subject to the same standards of reasonableness which apply to the benefits for New Employees. This does not mean that changes to the benefits of Transferring Employees may not be made in the future. Specifically, the RFP requires that the new contractor consider amending Pension Plan One and other benefits for Transferring Employees to be consistent with any changes made by the UC Board of Regents for UC employee benefits during the term of the new contract. The government will perform annual reviews of the new contractor's benefits to ensure compliance with all contract requirements.

The total compensation package for Transferring Employees at LANL (LANS TCP1) was determined to be substantially equivalent to that provided by UC under the prior LANL contract. The LANL Pension Plan One includes annual Cost of Living Adjustments. Transferring Employees as well as retirees received comparable medical and dental coverage. The LANL Pension Plan One will not include a lump-sum, cash-out option because providing the option for a lump sum distribution under the LANS TCP1 defined benefit pension plan would produce a total compensation package for Transferring Employees that is not substantially equivalent to that provided by the predecessor contract as of June 1, 2006, as such a package would provide substantially greater compensation.

Employee Benefits Other Than Pension

The RFP requires that the successful offeror provide a substantially equivalent total compensation package for Transferring Employees, including the provision of "UCRP age factors as a basis for determining compensation, substantially equivalent pension and other benefits . . ." "Other benefits" includes medical benefits.

For New Employees (those hired after the date of contract award, currently anticipated to be October 1, 2007) the RFP requires the new contractor to provide a total compensation package that is market-based and that will allow LLNL to recruit and retain the talent necessary to successfully carry out its mission.

Miscellaneous

1. Many LLNL folks have been tracking the LANL transition with the expectation that they will be similar. When appropriate, please consider identifying the differences between the LLNL and LANL RFPs.

Response to 1. Regarding human resources issues, there are only minor differences between the terms and conditions of the LLNL RFP and the LANL contract. These include site-specific provisions in the Personnel Appendix which are materially similar to the provisions of the prior Personnel Appendix.

2. The Draft RFP, Appendix A, Page 198, (a) Academic Cooperation Programs states " . . . Individuals approved by the Laboratory Director under this program may be reimbursed a daily subsistence allowance in accordance with this Appendix for each day of Laboratory attendance." Student travel and tuition reimbursement are not included. Why is the payment of tuition for students and employees now being considered an unallowable cost?

Response to 2. The Personnel Appendix specifies some of the human resources costs that may be allowable under the LLNL contract. It does not list all such costs and there may be others which are proposed by the new contractor for reimbursement. To be an allowable cost, tuition reimbursement must be consistent with the Federal Acquisition Regulation (FAR). It should be noted that the coverage under this provision in the RFP is nearly identical to that provided under the current contract with UC.

3. The draft RFP (Part II – Section J – Appendix A – Personnel Appendix Section VIII – Military Leave) states that leave, pay and benefits are authorized in accordance with NNSA policy. Where can I get a copy of the NNSA policy reference?

Response to 3. The NNSA military leave policy is currently in draft and will be posted at the NNSA Website for the LLNL Contract Competition as soon as it is finalized. If publication of the policy is delayed, the RFP further provides that Contractor policies not addressed in NNSA Policy are authorized as approved by the Contracting Officer.

4. At your last all-hands meeting a question was ask(ed) as to how many LANL employees choose to transfer their UC retirement funds to the LANS Tier 1, how many choose to go inactive in the UC retirement plan and move into LANS Tier 2, and how many simply choose to retire. You stated that you had that information, but not with you, and would forward it to the LLNL employees. Myself and my colleagues have not seen this information yet. Could you provide it at the all-hands meeting on June 14th?

Response to 5. The majority of LANL employees under the prior LANL contract elected LANS TCP1. Additional inquiries in this regard may be directed to LANS.

5. Is it a requirement that the new contractor be a for-profit organization? If the new contractor can be a non-profit, would that allow employees to keep 403 and 457 plans?

Response to 6. The new contractor must be a single legal entity, separate from any parent organization (see clauses L-2 and H-23 of the RFP). Department of Labor and Internal Revenue Service rules and applicable law determine the type of benefits that can be offered.