The Regents of the University of California

NATIONAL LABORATORIES SUBCOMMITTEE
November 15, 2017

The National Laboratories Subcommittee met on the above date at Mission Bay Conference Center, San Francisco

Members present: Regents De Le Peña, Mancia, Napolitano, Newsom, Ortiz Oakley, Pattiz, and Tauscher; Advisory member White

In attendance: Secretary and Chief of Staff Shaw, Vice President Budil, Interim Deputy General Counsel Wu, and Recording Secretary McCarthy

The meeting convened at 3:10 p.m. with Subcommittee Chair Pattiz presiding.

1. **APPROVAL OF MINUTES OF PREVIOUS MEETING**

Upon motion duly made and seconded, the minutes of the meeting of September 13, 2017 were approved.

2. **APPROVAL TO SUBMIT BID FOR THE LOS ALAMOS NATIONAL LABORATORY CONTRACT**

The President of the University recommended that she be authorized to execute all necessary and appropriate documents to effect submission of a bid on behalf of the University's team for the follow-on management and operating contract for Los Alamos National Laboratory.

[Background material was provided to Regents in advance of the meeting, and a copy is on file in the Office of the Secretary and Chief of Staff.]

Subcommittee Chair Pattiz noted the importance of Los Alamos National Laboratory (LANL) to the University and to the nation. Vice President Budil recalled that the Subcommittee had been briefed at its last several meetings regarding the competition for the LANL follow-on management and operating (M&O) contract and the various preliminary efforts UC had undertaken to prepare for that competition. The final Request for Proposals (RFP) was released on October 25 requiring that proposals be submitted by December 11. This action requested approval to submit a bid on behalf of UC's team. The submission of a bid would commit the team to enter into the contract on the terms contained in the RFP should the bid be successful.

The contract framework and provisions envisioned in the RFP were substantially similar to the current Los Alamos National Security LLC (LANS) contract. There were only a small number of changes made between the draft RFP released by the National Nuclear Security Administration (NNSA) in July and the final RFP, apparently the result of extensive feedback from potential bidders and stakeholders, and internal NNSA deliberations. The final solicitation proposed a contract with a five-year base period and up to five one-year option periods, or award terms, for a maximum contract duration of ten years. In contrast, the current LANS contract included a seven-year base period and up to 13 one-year award terms, for a maximum duration of 20 years. The scope of work in the final RFP was generally consistent with the scope of work in the current LANS contract. The contractor was expected to serve as a national resource in science, technology, and engineering focused on national security, energy, and the environment, with special responsibility for nuclear weapon stockpile maintenance and stewardship. As anticipated, the cleanup of legacy environmental waste would be handled by a separate contractor under a separate contract with the Department of Energy's (DOE's) Office of Environmental Management. Proposals for that contract were due several months prior; award of the contract had not yet been announced. The LANS bridge contract for that work would end in March 2018.

Regarding the financial terms of the proposed contract, Ms. Budil explained the four Contract Line Item Numbers (CLINs). The primary CLIN was for the overall management and operation of LANL. The total maximum fee pool was 2.5 percent of the annual estimated costs, with a maximum fixed fee of one percent and maximum award fee of 1.5 percent. The final solicitation estimated the annual cost to range from $1.98 billion in the contract's first year to $2.38 billion in its tenth year. The terms negotiated for the extension of the current LANS contract included a 2.5 percent fee pool, with two percent fixed and 0.5 percent performance award. The process by which the award fee would be determined was generally consistent with the process under the current LANS contract.

A second CLIN pertaining to major capital projects, defined as those over $50 million total project cost, provided that their price and fee structure would be negotiated on a case-by-case basis, similar to the model employed at LANS in recent years. Under a third CLIN, the government would pay a firm fixed price of up to $12.5 million for the cost associated with transitioning from LANS to the follow-on contractor during the proposed four-month transition period. The current LANS contract would expire at the end of September 2018. If the transition went according to schedule, the beginning of the transition period would be June 1, 2018. The $12.5 million was roughly comparable to reimbursements to LANS during its transition in 2006, and Ms. Budil characterized the amount as a tight budget for a large undertaking.

The fourth CLIN related to strategic partnership projects (SPPs), or work performed at the Laboratory for non-DOE entities, for which the final RFP contemplated a fixed fee of up to one percent. This maximum fee was less than the 2.5 percent currently earned by LANS. SPPs typically amount to 20 to 25 percent of the annual overall expenditures at LANL.

Ms. Budil summarized that the total available fee from the four CLINs would likely be marginally less under the follow-on contract than under the current LANS contract, although the 2.5 percent fee for the majority of the work was largely consistent with the current contract.

The RFP would require a new performance guarantee from the University. As part of the bid, DOE requires performance guarantees from each parent company to insure the performance of the obligations of the special purpose entity under the M&O contract. This condition was identical to current LANS terms.

Another important contract provision affecting financial risks to the University was the Conditional Payment of Fee clause, the primary means available for the government to reduce fee otherwise earned, as a result of performance issues. Ms. Budil reminded the Subcommittee that in fiscal year 2014 this clause was invoked to deny LANS all fixed and award fees because of the barrel that vented at the Waste Isolation Pilot Plant. The terms would be substantially the same as in the current LANS contract.

The overall risk profile of the follow-on contract was generally consistent with the current LANS contract. The risks associated with contract performance and contract compliance were generally unchanged, since the contract would cover the same scope of work, minus the environmental management work, and the applicable legal requirements would remain substantially the same. There were some efforts in DOE to streamline governance and oversight, but these had not changed substantially under the NNSA construct. With respect to financial risk, the mechanisms related to award fee determinations, cost reimbursement, fee reductions, and performance guarantees remained largely unchanged.

Ms. Budil outlined the proposal process. The proposals were due on December 11 and would consist of three volumes. Volume One would contain the offer to enter into a contract, including the representations and certifications, and the parent companies' performance guarantees. Volume One would be evaluated for compliance, but would not be graded. Volume Two, evaluated by the Source Evaluation Board, would contain information grouped around three evaluation criteria. In the contractor past performance category, the first criterion, each parent company would provide data on up to three contracts that would be evaluated for quality of performance and relevance, which was defined as being similar in size, scope, and complexity to the LANL Statement of Work. Another important theme in the past performance was leading and managing organizational change. The second criterion concerned laboratory organization and key personnel, including the organizational approach, and the names of the members of the leadership team. This section placed a strong emphasis on detail of the team's plan to lead and implement organizational culture change. The third criterion was small business participation, including the approach and the intent to use small veteran-owned, women-owned, and similar businesses. Criteria one and two, for past performance and key personnel, would be given equal weight and were considered significantly more important than the third criterion. Volume Two of the proposal was restricted in length to 20 pages, not including past performance forms and key personnel resumes, a substantial decrease from the recent Sandia RFP, which allowed 35 pages. Volume Three would contain cost information, including proposed transition costs, and the fee associated with the contract. The government had expressed the intent to award the contract to the offeror whose proposal is determined to provide the best value to the government, but clarified that does not mean lowest cost.

Once the proposal had been determined to be within the competitive range and fully compliant, NNSA would provide the University with a written description of the proposal's significant weaknesses and deficiencies. This written statement would be followed by orals and discussions with the key personnel team. After orals, each team would have the opportunity to submit a final proposal revision. Ms. Budil anticipated that this process would likely take months. According to the current schedule, the formal transition period would start on June 1, 2018, to facilitate an October 1, 2018 start date for the follow-on contractor. Based on that schedule, it would be expected that the contract award would be announced in April or May 2018.

Subcommittee Chair Pattiz commented that UC would continue to manage Lawrence Livermore National Laboratory with its existing partners. He expressed strong support for approval of this action and for the University's continued operation of LANL.

Upon motion duly made and seconded, the Committee approved the President's recommendation and voted to present it to the Board.

3. **APPROVAL OF LAWRENCE BERKELEY NATIONAL LABORATORY CONTRACT WITH THE DEPARTMENT OF ENERGY**

The President of the University recommended that she be authorized to execute the modified Lawrence Berkeley National Laboratory management and operating contract with the Department of Energy (DOE), as negotiated by the University and the DOE.

[Background material was provided to Regents in advance of the meeting, and a copy is on file in the Office of the Secretary and Chief of Staff.]

Vice President Budil explained that the Department of Energy (DOE) was making a substantial effort to return to the original intent of the management and operations (M&O) operating model, which created a special relationship between the government and its Federally Funded Research and Development Centers to ensure that they could work closely with the government, provide scientific and technical advice free of conflicts of interest, and retain a world-class workforce, all capabilities that would be difficult to sustain within the government. The DOE initiated a serious effort to understand how to best revitalize this relationship, which 56 commissions noted had frayed over the years. Part of this effort was to examine the contracting model. Over time, the contracts had become very large and complex, and had ceased to be a useful management tool. The DOE undertook what it called a revolutionary contract reform effort, starting with the SLAC National Accelerator Laboratory completed the prior year and viewed as very successful.

Lawrence Berkeley National Laboratory (LBNL) was asked to participate in this contract reform effort, which Ms. Budil said was a testament to the work done to build a strong and sustained operational culture at LBNL. Teams with participants from Ms. Budil's office, from LBNL, including many subject-matter experts, with support from legal staff including the Office of General Counsel, and from the DOE Berkeley Site Office reviewed and optimized every element of the contract. An executive steering committee consisting of

Ms. Budil, DOE Berkeley Site Office manager Paul Golan, and LBNL Director Michael Witherell conducted tri-party discussions for more than 235 hours, culminating in the proposed contract modification. This process had built trust among the parties, greatly increased understanding of the contract, and created opportunities for improvement. The proposed contract represented such a substantial change that Regents' approval was sought. As the contract evolves further through the normal contract modification process, it would not need to be brought back to the Regents.

Of the 300 contract elements that were examined, 97 elements were modified and 42 were deleted. Of the 53 DOE orders in the original contract, three were eliminated and more than 30 were replaced with site compliance plans, UC policy, or industry standards, all tailored to fit the circumstances of LBNL.

The goal of the reform effort was to re-establish the relationship under which the DOE provides guidance on what LBNL should do, and LBNL has flexibility to develop standards for the safe and secure execution of the work, tailored to the circumstances of LBNL. To the greatest extent possible, decision-making would be local. For example, the DOE order on human subject research would be replaced with the UC policy. The DOE property management order would be replaced with an industry standard. DOE orders would be replaced by a site-specific plan for security and emergency management.

Ms. Budil emphasized that the risk profile of the contract would remain the same, in duration, total available fee, scope of work, and process for performance evaluation. Many of the negotiated contract changes would improve the overall risk profile. Strategic risk would decrease. LBNL was one of the few laboratories offered this opportunity. Ms. Budil expressed her view that the contract would position LBNL for better performance and additional research investments through demonstrated excellence. The compliance risk would decrease, as requirements that did not add value would be eliminated. Prior one-size-fits-all requirements would be replaced with standards attuned to LBNL.

The contract's operational risk would also decrease, as the more tailored requirements would allow LBNL to focus its resources where they are needed, more toward achieving outcomes instead of mere compliance, allowing LBNL to maximize each allocated research dollar.

In a slight change to the contract's financial risk, LBNL would assume greater accountability for performance failures in all functional areas, and potential fee decrements. On the other hand, efficiencies negotiated through the proposed contract could improve performance, leading to fee increments. Ms. Budil anticipated possible slight additional variability in the fee.

Regarding the current status of the contract process, Ms. Budil reported that DOE headquarters was reviewing the full contract, which had the staunch support of the DOE Berkeley Site Office manager and the LBNL Director. Based on the quantity of prior communications, Ms. Budil did not anticipate any substantive changes. This action would authorize the President to sign the contract modification, once the final form was in hand.

She expected to receive DOE approval and an early 2018 execution of the contract modification.

Upon motion duly made and seconded, the Committee approved the President's recommendation and voted to present it to the Board.

The meeting adjourned at 3:40 p.m.

Attest:

Secretary and Chief of Staff