

**Los Alamos National Security, LLC (LANS)
Los Alamos National Laboratory (LANL)**

**REQUEST FOR PROPOSAL
INSTRUCTIONS TO OFFERORS
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1. INVITATION TO SUBMIT BID / PROPOSAL (Dec 2015)

- a. The North American Industry Classification System (NAICS) code for the Crossroads and NERSC-9 Supercomputer Systems and associated Options for this acquisition is 334111 – Electronic Computer Manufacturing. The small business size standard for the this NAICS code is 1,250 or fewer employees.

The NAICS code for the Non-Recurring Engineering (NRE) portion of this acquisition is 541712 – Research and Development in the Physical, Engineering and Life Sciences. The small business size standard for this NAICS code is 1,000 or fewer employees.

- b. You are invited to submit a bid/proposal (herein referred to collectively as Proposal) for the items specified in this Solicitation, also known as request for proposal (RFP), in accordance with the provisions contained herein and the terms and conditions of the proposed subcontracts. All questions you may have concerning this Solicitation should be submitted in writing and directed to the LANS Subcontract Administrator indicated below. Any communication pertaining to this project with any other person in the APEX community, including but not limited to personnel of ACES (LANL and SNL) and NERSC (LBNL), will be viewed as an undermining of the source selection process and Offerors may be disqualified on that basis.

Darren Knox, LANS Subcontract Administrator

Email address: dknox@lanl.gov

- c. Your Proposal is to be delivered to the Subcontract Administrator not later than 4:00 PM Mountain Time on October 31, 2016. Partial or incomplete proposals will not be considered.

- d. Proposals must be transmitted as follows:

- Proposals shall be transmitted via electronic file transfer to the website below, using dknox@lanl.gov as the recipient:

<https://transfer.lanl.gov>

- Each volume must include the specified Proposal Documents (see Section 3.b. below) within a compressed, **password protected**, ZIP file archive. The file size limitation per archive is 2GB.
- A separate email must be sent to dknox@lanl.gov containing the password used to protect the file archive.

- e. You will allow a minimum of two hundred forty (240) calendar days for acceptance of your Proposal.

- f. LANS reserves the right to cancel this Solicitation at any time without incurring any liability/damages associated with such cancellation.

- g. If you plan to submit a Proposal in response to this Solicitation, complete and return the *Notification of Intent to Submit Proposal* to the LANS Subcontract Administrator within seven (7) calendar days of receipt of this Solicitation. This form may be found at the following web site:

<http://www.lanl.gov/business/vendors/supplier-forms.php>.

- h. If you have an office within the continental United States of America or its territories, you must be registered and on active status in the System for Award Management (SAM) at the following web site in order to be eligible for award of a LANS or UC subcontract:

<https://www.sam.gov/>

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If you are not listed in SAM at the time that your proposal is due, your proposal will be deemed incomplete and will not be considered.

2. AMENDMENT OF SOLICITATION (Aug 2015)

- a. LANS may, by amendment, modify any provision or part of this Solicitation at any time prior to the award of any resultant subcontract. All terms and conditions that are not modified remain unchanged.
- b. An Offeror shall acknowledge receipt of any amendments to this Solicitation. Failure to acknowledge may result in the disqualification of an Offeror's proposal. Acknowledgments shall be provided as follows:
 - Immediately upon receipt of the amendment via email to the LANS Subcontract Administrator.
 - In the Offeror's Proposal Letter that accompanies an Offeror's proposal.

3. PREPARATION AND SUBMISSION OF PROPOSALS (Dec 2015)

Your proposal should contain your best terms from a cost/price and technical standpoint, and include all available discounts and/or government pricing.

a. Proposal Media

Submit your Proposal in two volumes as identified below. These two volumes must be separate and distinct from one another and each volume must contain all applicable Proposal Documents:

1. Commercial Proposal Volume (i.e., business, administrative, and pricing information). Except for the financial statements requested, the Commercial Proposal Volume should be limited to fifty (50) pages or fewer.
2. Technical Proposal Volume (i.e., technical information on how the scope of work will be performed). The Technical Proposal Volume should be limited to two hundred (200) pages or fewer.

An Offeror's proposal must be named and organized in the manner indicated below under Proposal Documents to facilitate identity of the documents and review by the Source Evaluation Committee. Offerors must use 10-12 point font for legibility.

b. Proposal Documents

The documents identified below are all required and must be submitted as part of your Proposal. Complete and accurate submittal of the information requested will be the basis to determine whether your Proposal is responsive to this Solicitation. Supplements to the documents may be used if additional information is needed to present a complete and effective proposal. **Note:** unless otherwise stated below, a proposal document will not be incorporated in the resultant subcontract and will only be used for evaluation of your Proposal.

1. **Commercial Proposal Volume:** The following documents/information must be completed, signed (when required) and submitted with your Commercial Proposal Volume. They will provide the basis for the commercial evaluation of your Proposal.
 - ***Offeror's Proposal Letter***
A copy of this document is attached hereto for an Offeror's use in preparing its proposal. Proposals by joint ventures, consortia, associations or partnerships shall designate one single participant to represent all those forming the offering entity, and shall list the full names and addresses of all participants in the offering entity. The name of the signatory shall be typed or otherwise clearly imprinted below each signature, and a corporate offeror shall state its place of incorporation. Evidence of

the signatory's authority shall be included, if the offering entity is a joint venture, association, consortia or partnership; if not, satisfactory evidence of the authority of any signatory shall be furnished when requested.

- **Form 3500.00.2002 Representations and Certifications**

The successful Offeror's submittal of this completed form will be incorporated in the resultant subcontract. This form may be found at the following web site:

<http://www.lanl.gov/business/vendors/supplier-forms.php>

If an offering entity is a joint venture, association, consortia or partnership, each member entity must submit individual Representations and Certifications Forms.

- **RFP Form A Schedules of Proposed Quantities and Prices**

A copy of this document is attached hereto for an Offeror's use in preparing its proposal. The proposed quantities and pricing shall be firm fixed-prices for all Work to be performed pursuant to the subcontracts to be awarded as a result of the RFP. An Offeror shall complete the attached Schedules of Proposed Quantities and Pricing herein or reasonable facsimiles thereof, inclusive of similar levels of itemization.

- **RFP Form B Schedules of Proposed Milestones and Payments**

A copy of this document is attached hereto for an Offeror's use in preparing its proposal. An Offeror shall complete the Schedules of Proposed Milestones and Payments herein or reasonable facsimiles thereof.

- **RFP Form G Offeror's Additional Representations**

The form may be found at the following web site:

<http://www.lanl.gov/business/vendors/supplier-forms.php>.

- **Form 3191.00.0993 Small Business Subcontracting Plan**

The successful offeror's submittal will be incorporated in the resultant subcontract. This form may be found at:

<http://www.lanl.gov/business/vendors/supplier-forms.php>.

Exception: (1) You do not have to submit this plan if you claim an exemption within the *Small Business and Small Disadvantaged Business Subcontracting Certification* in your Representations and Certifications. (2) The following conditions shall apply when you are required to submit a small business subcontracting plan.

- No subcontracts will be awarded unless and until acceptable subcontracting plans, if required, are negotiated with LANS and UC and the approved plans are incorporated as a material part of the subcontract.
- As determined by LANS and UC respectively, an acceptable subcontracting plan must provide the maximum practicable opportunity for Small Business, Veteran-Owned Small Business, Service-Disabled Veteran-Owned Small Business, HUBZone Small Business, Small Disadvantaged Business, and Women-Owned Small Business concerns to participate in the performance of the subcontract.
- If acceptable subcontracting plans are not negotiated within the time limits prescribed, the Offeror shall be ineligible for an award with LANS, UC, or both. LANS and UC will each notify the Offeror in writing of their respective reasons for determining a subcontracting plan to be unacceptable and will allow adequate time for the Offeror to modify its plan.
- Commercial subcontracting plans on a company-wide basis must have a current Federal agency approval and are acceptable for commercial products only.

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- Master subcontracting plans on a division-wide or plant-wide basis must contain individual subcontracting goals for the particular subcontract.
 - **Amount Offered for Subcontractor's Regional and Community Development Plan**
In accordance with the solicitation provision titled "Subcontractor's Regional and Community Development Plan" contained herein, an offeror shall provide a statement on its letterhead of the total dollar amount or percentage of amounts invoiced to LANS for the Crossroads system, Options and associated NRE that it will commit to spend on economic development and diversification of NNM during the term of the subcontracts. The amount proposed and any resulting Plan will only apply to subcontracts with LANS, representing ACES (Crossroads system, Options, and associated NRE).
2. **Technical Proposal Volume:** The following documents/information must be completed, signed (when required) and submitted with your Technical Proposal Volume. They will provide the basis for the technical evaluation of your Proposal.

NOTE: An Offeror shall not reveal pricing information of any kind within the documents composing the Technical Proposal Volume.

- **Technical Requirements Document**

An Offeror's Technical Proposal shall include narrative and graphics as appropriate, providing responses/proposed technical solutions to each of the numbered sections of the Technical Requirements Document included in this RFP. An Offeror shall incorporate its responses/proposed technical solutions directly into each section of the Technical Requirements Document. The Technical Requirements Document is provided in MS Word format to facilitate this proposal requirement. The Scope of Work and Technical Specifications for any subcontract(s) resulting from this RFP will be negotiated based on the Technical Requirements Document and the successful Offeror's responses/proposed technical solutions.

- Where the word "should" appears throughout the Technical Requirements Document, it is used to convey a target that an Offeror ought to meet or exceed.* If an Offeror exceeds a target, its proposal may be upgraded. If an Offeror fails to meet a target, its proposal may be downgraded.

* *Wherever the successful Offeror demonstrates its ability to meet the desired target(s), the word "should" will be changed to "shall" in the resultant subcontracts, thereby making it a requirement.*

- Where the word "shall" appears throughout the Technical Requirements Document, it is used to impose a requirement that an Offeror must meet or exceed. If an Offeror fails to meet a requirement, its proposal may be downgraded or deemed non-responsive.

- **Technical Data Summary Sheet**

A copy of this document is attached hereto for an Offeror's use in preparing its proposal. An Offeror's Technical Proposal shall include this Technical Data Summary Sheet to summarize its proposed systems.

- **Offeror's Experience Statement**

A copy of this document is attached hereto for an Offeror's use in preparing its proposal. An Offeror shall complete this form to indicate its experience in similar projects.

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- ***Proposed Lower-Tier Subcontractor and Vendor Experience Statement***

A copy of this document is attached hereto for an Offeror's use in preparing its proposal. An Offeror shall complete this form for each lower-tier supplier or subcontractor whose work on the proposed subcontract is anticipated to be \$1M or more.

- ***Resume(s) of Proposed Key Personnel***

A copy of this document is attached hereto for an Offeror's use in preparing its proposal. An Offeror shall complete this form to accompany the resume submitted for the person it names to be its Technical Project Leader.

- ***Summary of QA / QC Program***

A copy of this document is attached hereto for an Offeror's use in preparing its proposal. An Offeror shall provide a summary of its QA / QC Program in accordance with this form.

4. BASIS OF AWARD – BEST VALUE (Aug 2015)

- a. LANS and UC intend to award subcontracts resulting from this Solicitation to the responsive, responsible offeror whose proposal conforms to the instructions and will be most advantageous to LANS and UC, considering technical/management features identified in this Solicitation and considering price.

- b. A written proposal for the complete Crossroads and NERSC-9 systems, Options, and NRE is required.

Alternative solutions for components of hardware/software may be included in an Offeror's proposal. However, if an Offeror chooses to submit a fundamentally different solution (i.e. different integrators or architecture), complete, separate and distinct proposal packages, to include all applicable/required proposal documents, must be submitted for each alternative.

An Offeror's responses/proposed solutions must be clear and complete. The Source Evaluation Committee will make no presumption of an Offeror's proposed technical solution or an Offeror's technical capability when evaluating an Offeror's Technical Proposal.

Failure to comply with these proposal submission instructions may cause an Offeror's proposal(s) to be downgraded or to be deemed non-responsive.

- c. Proposals will be evaluated in accordance with the Technical Evaluation and Price Evaluation Processes stated below:

1. Technical Evaluation Process

- A. Technical Evaluations will be assessments of the data/information an Offeror provides in its Technical Proposal.
- B. Offerors' Technical Proposals will be evaluated considering the following three (3) Technical Evaluation Criteria. Proposals will be evaluated based on the extent to which an Offeror's Technical Proposal demonstrates the Offeror's ability to meet or exceed targets and/or requirements as stated in the RFP. The 3 criteria are listed in a descending order of importance with the Technical Design/Function criterion being significantly more important than the other two (2) criteria.
 - i. Technical Design/Function – This criterion pertains to the physical Crossroads and NERSC-9 systems (includes hardware/software oriented Options) and is comprised of the following sub-factors, which are listed in a descending order of importance with the first two (2) sub-factors being significantly more important than the last three (3):

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- How well the Offeror's proposed architecture satisfies the current mission needs and provides a well-documented path to the next generation architecture technology.
 - The extent to which the other additional features, components, performance characteristics, or other properties proposed by Offeror provide added value to the system.
 - The extent to which the proposed systems' designs promote efficient hardware problem identification and problem resolution with minimal system disruption.
 - The extent to which the proposed systems' packaging effectively balances reliability, power, cooling, and floor space requirements.
 - The extent to which the proposed systems' computational capabilities and operating environments are easily accessible and useable.
- ii. Performance Capability – This criterion is comprised of the following sub-factors, which are of approximately equal importance:
- Assessment of project risks with regard to the Offeror meeting the technical, support, and schedule requirements of this solicitation.
 - The Offeror's experience and past performance in providing high-end capability computing systems.
 - The Offeror's experience and past performance in providing project management and engineering services.
- iii. Non-Recurring Engineering (NRE) – This criterion is comprised of the following sub-factors, which are of approximately equal importance:
- The extent to which proposed collaboration areas provide added value beyond planned roadmap activities.
 - The extent to which the proposed collaboration areas provide a vertically integrated solution that can be expected to impact follow-on systems to be procured by the U.S. Department of Energy's NNSA and Office of Science.
- C. If the SEC Chairperson determines it will be beneficial in evaluating Technical Proposals considering the Technical Evaluation Criteria stated above, the SEC may gather additional information by any of the following methods:
- a) Check references furnished by Offerors.
 - b) Conduct site visits to Offerors' facilities.
 - c) Request oral presentations of Offerors' proposals. Oral presentations may be scheduled for dates/times approximately ten (10) days after the scheduled proposal due date. Presentations will be limited to one (1) hour, followed by an appropriate time period for questions and answers.

If additional information is gathered in accordance with these methods, that information may positively or negatively impact the SEC's evaluation and its determination of Offerors' technical ratings.

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2. Price Evaluation Process

An Offeror's Price Proposal shall be submitted as Firm-Fixed Price. An Offeror's Price Proposal will be evaluated for reasonableness and realism in relation to its Technical Proposal.

The SEC's Price Evaluation of a proposal will be used in performing a best value technical and price trade-off analysis as the final step of the process to make a recommendation to the Source Selection Official as to which proposal offers the best overall value.

- A. Evaluation of Pricing on Options: Pricing will be evaluated only on Options that are deemed to be in the best interest of ACES/NERSC. Nevertheless, an Offeror must propose a price for each Option.
 - a) ACES and NERSC may select different Options for inclusion in their respective subcontracts. Selecting an Option for inclusion in one or both of the subcontracts does not guarantee the Option will be exercised.
- d. Final selection - The Offeror(s) selected will be the one(s) whose proposal(s) contain(s) the combination of factors offering the best overall value to LANS and UC considering technical and price evaluations. In making this best value trade-off analysis, the SEC for this procurement is more concerned with attaining greater technical/management features than with making an award at the lowest overall price. An Offeror may be selected whose technical proposal contains greater technical/management features, but whose price is not the lowest. However, an Offeror with a higher price will not be selected to achieve only slightly greater technical/management features. In the event the ratings for technical proposals are substantially equal, the proposed pricing will be a greater factor in the final selection. If the highest technically ranked proposal is also the lowest priced proposal, a trade-off analysis is not necessary to determine the best value proposal and a trade-off analysis will not be performed.
- e. All communications between Offerors and the APEX community, including but not limited to personnel of ACES (LANL and SNL) and NERSC (LBNL), shall be in accordance with the *LANS Solicitation and Selection Process for Competitive Procurements*, which may be found at the following web site:

<http://www.lanl.gov/business/vendors/supplier-forms.php>.

5. **OTHER AWARD CONSIDERATIONS (Aug 2015)**

- a. LANS and UC may, if such action is in their best interest, reject any or all proposals, and waive informalities and minor irregularities in proposals received. LANS and UC reserve the right to make a partial award, multiple awards, or make no award if it deems that decision to be in their best interest.
- b. Neither financial data submitted with a proposal, nor representations concerning facilities or financing, will form a part of the resulting subcontract. However, if the resulting subcontract contains a clause providing for price reduction for defective cost or pricing data, the subcontract price will be subject to reduction if cost or pricing data furnished is incomplete, inaccurate, or not current.
- c. LANS or UC or both may, at their sole discretion, conduct pre-award surveys. A survey team may visit an Offeror's facility to determine the Offeror's ability to perform. The team may also evaluate the Offeror's system for determining the financial and technical ability of any proposed lower-tier subcontractors or suppliers. Any equipment to be used in performance of the proposed subcontracts is also subject to inspection and approval. Failure to abide by this provision may be grounds for rejection of an Offeror's Proposal.
- d. The terms and conditions contained in the sample LANS and UC Subcontracts will be included in the resultant subcontracts. LANS and UC do not intend to make changes to those terms and conditions, unless necessary to clarify the scope of work and/or technical

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requirements. Failure to accept the terms and conditions as seen in the RFP may result in significant unacceptable delays in LANS' and UC's ability to award subcontracts for this project and may result in your Proposal being deemed to be non-responsive. Nonetheless, if an Offeror takes exception or suggests a deviation to any specific term or condition, it must complete Form OED, Offeror's Exceptions and Deviations, and must submit that form with its Proposal. This form may be found at the following website:

<http://www.lanl.gov/business/vendors/supplier-forms.php>.

- e. In accordance with Exhibit A, General Condition GC-60, Subcontracts with Contractor's Team Members and Team Member Affiliates (Jan 2010), no fee or profit shall be paid to any of LANS' Team Members or Affiliates when subcontracting with LANS.

6. EXAMINATION OF SOLICITATION DOCUMENTS (Aug 2015)

- a. If you plan on submitting a proposal in response to this Solicitation, you should examine with appropriate care all documents and all addenda made a part of this Solicitation, and inform yourself of all conditions which might in any way affect the cost or the performance of the Work. Failure to do so will be at your sole risk, as you will be deemed to have included all costs for performance of the Work in your Proposal. Should you find discrepancies in, or omissions from, the Solicitation documents, or should their intent or meaning appear unclear or ambiguous, or should any other question arise relative to the Solicitation documents, you shall promptly notify the LANS' Subcontract Administrator in writing as stated in these solicitation provisions. You will be solely responsible for its timely receipt by the Subcontract Administrator. Replies to such notices may be made in the form of supplementary correspondence or, as appropriate, an amendment to the Solicitation documents which will be issued simultaneously to all persons who have been sent this Solicitation by LANS.
- b. If you desire an explanation or interpretation of one or more Solicitation documents, you must submit questions in writing no later than ten (10) calendar days prior to the proposal due date. No oral inquiries will be accepted. Oral explanations or instructions given before the award of the subcontract will not be binding on LANS or UC. Any information given to a prospective offeror concerning this Solicitation will be furnished promptly to all other prospective Offerors, if that information is necessary in submitting proposals or if the lack of it would be prejudicial to any other prospective Offeror.

7. OFFEROR'S MODIFICATION AND WITHDRAWAL OF PROPOSALS (Aug 2015)

You may modify or withdraw your Proposal by written notice, provided that the notice is received by the LANS Subcontract Administrator prior to the proposal due date.

8. DISCLOSURE OF PROPOSAL DATA (Oct 2014)

- a. If you include in your proposal data that you do not want disclosed to the public for any purpose except for evaluation purposes:

Mark the title page with the following legend:

This proposal includes data that shall not be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate this proposal. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheet].

Mark each sheet of data you wish to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

- b. If, however, a subcontract is awarded as a result of, or in connection with, the submission of this data, in addition to the Government's rights under FAR 52.227-23 Rights To Proposal Data (Technical) (JUNE 1987), LANS and UC shall have the right to duplicate, use or disclose

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the data to the extent provided in the resulting subcontract. This restriction does not limit LANS' rights to use information obtained in this data if it is obtained from another source without restriction.

- 9. REGIONAL PURCHASING PRICING PREFERENCE (Nov 2014)** (This instruction relates only to pricing proposed for subcontracts to be awarded by LANS as a result of this RFP).
- a. In accordance with Appendix M of the LANS' Prime Contract with DOE/NNSA, LANS will maximize procurement opportunities for Northern New Mexico (NNM) small business concerns by providing a Regional Purchasing Pricing Preference in acquisitions exceeding \$100,000. The price preference will be applied by adding a 5% adjustment factor to an Offeror's total proposed price for the Crossroads system and Options, as well as ACES NRE, if the Offeror's business does not meet the definition of a NNM small business concern.
 - b. A NNM small business concern is a small business that is actively engaged in doing business in NNM, has an operative business location in NNM, and uses labor from NNM. NNM includes the counties of Taos, Santa Fe, Rio Arriba, Sandoval, Mora, San Miguel, and Los Alamos, and the eight regional Pueblos of Nambe, Picuris, Pojoaque, San Ildefonso, Ohkay Owingeh (formerly known as San Juan), Santa Clara, Taos, and Tesuque.
 - c. If a business claims to be a NNM small business concern, it must demonstrate to LANS' satisfaction when requested, through the submission of New Mexico gross receipts tax and unemployment compensation tax forms or otherwise, that for the calendar year preceding the submission of its bid/offer that:
 - (1) it has been properly authorized to do business and has been operating in NNM with a staff of three or more full time equivalent employees (of which 51% must reside in NNM), and that it currently has a facility in NNM that can support the business activity contemplated by the Statement of Work / Scope of Work; or
 - (2) it has historically operated in NNM with two or less full time equivalent employees who reside in NNM, it is independently owned (i.e., its owner(s) exercise(s) close control over operations and decisions which are not subject to control or the power to control by others), its majority ownership interest is held by residents of NNM, it has been properly authorized to do business in NNM and it currently has a facility in NNM that can support the business activity contemplated by the Statement of Work / Scope of Work.
- 10. SUBCONTRACTOR'S REGIONAL AND COMMUNITY DEVELOPMENT PLAN (Aug 2015)** (This instruction relates only to any subcontracts awarded by LANS as a result of this RFP).
- a. Under the prime contract between LANS and DOE/NNSA, LANS is required to enhance economic development and economic diversification of the Northern New Mexico (NNM) region, which includes the counties of Taos, Santa Fe, Rio Arriba, Sandoval, Mora, San Miguel, and Los Alamos, and the eight regional Pueblos of Nambe, Picuris, Pojoaque, San Ildefonso, Ohkay Owingeh (formerly known as San Juan), Santa Clara, Taos, and Tesuque. To achieve this end, LANS is flowing down this requirement in major subcontracts.
 - b. As part of your response to this Solicitation, state the total dollar amount or percentage of amounts invoiced to LANS that you will commit to spend on economic development and diversification of NNM during the term of the subcontract.
 - c. If awarded a subcontract, you will be required to develop and submit a Subcontractor's Regional and Community Development Plan (SRCDP) that will detail how your financial commitment will be used to support economic development and diversification in NNM. The SRCDP will state your activities and goals for each year of the subcontract. See Table 1 below for examples of activities that enhance economic development and diversification. Impacts that result as a natural course of performing the subcontract shall not be listed as SRCDP commitments. Some of those impacts are:
 - Small business procurement requirements stated elsewhere in the subcontract.

- Employment creation resulting from subcontract performance (i.e., hiring NNM residents to perform subcontract work).
- Corporate relocation or establishment of a company office to NNM solely to administer LANS subcontracts.

<p align="center">TABLE 1. Regional and Community Development Plan Categories <i>Activities will target populations in Northern New Mexico (NNM), defined as the counties of Taos, Santa Fe, Rio Arriba, Sandoval, Mora, San Miguel, and Los Alamos, and the eight regional Pueblos of Nambe, Picuris, Pojoaque, San Ildefonso, Ohkay Owingeh (formerly known as San Juan), Santa Clara, Taos, and Tesuque.</i></p>		
Economic Development (ED)	Educational Enrichment	Corporate Citizenship
<p>Subcontracting with Northern New Mexico small business concerns. A NNM small business concern is a small business that is actively engaged in doing business in NNM; has an operative business location in NNM, and uses labor from NNM.</p> <p>Entrepreneurship development such as protégé/mentorship, new business creation, relocation of small business to NNM which employs local people, or provision of below-market priced or free office space.</p> <p>Direct venture capital investment in local start-up businesses.</p> <p>Grant Pool Contributions.</p> <p>Pro Bono Technical Assistance for the region’s ED initiatives (e.g. water, wastewater, transportation, alternative energy, telecommunications, land use).</p> <p>Financial contributions to ED organizations, loan pools, and grants to ED initiatives.</p> <p>In-kind contributions of volunteer time and equipment to ED initiatives.</p> <p>Sponsorship of ED Public Events such as trade fairs, job fairs, and ED Forums and Roundtables.</p> <p>Workforce development where the purpose of specialized training programs is tied to immediate employer needs and job creation, such as construction/technical apprenticeships, special skills training or professional training.</p> <p>Establishment of corporate regional office.</p>	<p>Establishment or participation in such programs as:</p> <ul style="list-style-type: none"> • Academic awards; • Scholarships or cooperative agreements with area schools and colleges; • Training; • Student mentoring; and • Apprenticeships. <p>Contributions to Regional Educational Foundations.</p>	<p>Tangible support of civic and charitable organizations in NNM, such as the United Way, Chambers of Commerce or YMCA.</p> <p>Employees volunteer time in community service work.</p>

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- d. If awarded a subcontract by LANS, you will begin developing a SRCDP immediately upon notice of award and shall deliver your proposed SRCDP to the LANS Subcontract Administrator for review and approval within 60 days after notice of award. Your approved SRCDP shall be incorporated into the subcontract by reference through a subcontract modification, and shall apply with the same force and effect as if incorporated in full text.
- e. During performance of the subcontract, you shall maintain records, including receipts, payroll information, and any other documents that demonstrate compliance with your SRCDP. You shall submit reports to LANS semi-annually documenting your compliance with its SRCDP and, if requested by LANS, you shall provide evidence to substantiate any statement contained in a report.
- f. You will work with:
 - The LANL Community Program Office, which will guide you with SRCDP formatting, reporting, modification and evaluation requirements and procedures.
 - The Regional Development Corporation (RDC) or the LANL Designated Community Development Organization, which will provide an orientation to economic development in Northern New Mexico and assist you in selecting viable projects;
 - The Consortium of Major LANL Subcontractors, which will outline its strategy for pooling resources to address regional economic development and assist you in project selection; and
 - The LANL Community Program Office, which will administer approved plans and determine compliance with the plan's requirements.

11. NOTICE TO UNSUCCESSFUL OFFEROR(S) (Dec 2015)

- a. Notice will be sent to unsuccessful Offerors in accordance with the *LANS Solicitation and Selection Process for Competitive Procurements*, which may be found at the following website:

<http://www.lanl.gov/business/vendors/supplier-forms.php>

However, for competitive subcontracts over \$150,000, in which a small business concern received a small business preference, each unsuccessful small business concern will be notified by email of the name and address of the apparent successful offeror prior to award of the subcontract.

- b. In instances where award is based on factors other than price, unsuccessful Offerors may submit a written request for individual debriefings. These requests must be received by the LANS Subcontract Administrator within five (5) working days of the date of Offeror's receipt of LANS' notice of non-award. A debriefing provides an unsuccessful Offeror the basis for the selection decision and an evaluation of the strengths and weaknesses of their proposal correlated to the evaluation factors. A debriefing does not provide a point-by-point comparison of the Offeror's proposal with other proposals. If a debriefing is requested in a timely manner as prescribed above, the party requesting the debriefing will have ten (10) days from the completion of the debriefing to file a Protest under the *LANS Procurement Protest Process*.

12. NOTICE CONCERNING NEW MEXICO GROSS RECEIPTS TAX (Aug 2015) (This instruction relates only to any subcontracts awarded by LANS as a result of this RFP).

- a. New Mexico Gross Receipts Tax (NMGRT) is unique to New Mexico and, unlike a sales tax, is an excise tax imposed on the seller of certain goods and services in exchange for the privilege of doing business in New Mexico. Additional information on NMGRT may be found at <http://www.tax.newmexico.gov/Businesses/gross-receipts.aspx>.
- b. LANS issues various types of New Mexico Non-Taxable Transaction Certificates (NTTC) to its subcontractors, which entitle the certificate holder to take appropriate deductions from

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NMGRT on its Combined Reports Form (CRS-1) that is submitted to the New Mexico Taxation and Revenue Department. An NTTC issued by LANS to a subcontractor can only be used to support that subcontractor's deductions; it does not entitle a subcontractor's immediate and/or lower-tier subcontractors, including any individuals and entities that are issued an IRS Form 1099, to any deductions or exemptions from NMGRT under New Mexico law. However, a subcontractor may be entitled to issue an NTTC to its immediate and lower tier subcontractors under certain conditions. Consequently, each Offeror is encouraged to consult with its tax advisor prior to submitting its Proposal if it has any questions regarding NMGRT.

- c. Since a subcontractor will be issued one or more NTTCs by LANS as appropriate, LANS will not pay NMGRT to a subcontractor for work performed by its own employees. However, LANS may pay a subcontractor for NMGRT paid to its lower-tier subcontractors, if such lower-tier subcontractors are not eligible for applicable deductions or exemptions from NMGRT under New Mexico law and such ineligibility was justified in a subcontractor's proposal.
- d. If awarded a subcontract, you shall complete and submit the *New Mexico Non-Taxable Transaction Certificate (NM NTTC) Form* as specified in the form. The information contained in the form will be used by LANS to issue appropriate NTTCs to the successful Offeror. A copy of this form may be found at the following web site:
<http://www.lanl.gov/business/vendors/supplier-forms.php>.
- e. This notice is not intended to provide tax advice. Employees of LANS are not qualified or permitted to give tax advice.

13. ELECTRONIC FUNDS TRANSFER AUTHORIZATION FORM (Oct 2014) (This instruction relates only to any subcontracts awarded by LANS as a result of this RFP).

LANS prefers to transmit payment for invoices using the federal Automated Clearing House process. This process reduces the number of days it takes for a subcontractor to receive their money. If awarded a subcontract, you must complete and return the Electronic Funds Transfer Authorization Form directly to the LANS Treasury Department at the address shown on the form, if you have not previously done so. This form may be found at the following website:

<http://www.lanl.gov/business/vendors/supplier-forms.php>.

14. SECURITY DOCUMENTS AND/OR APPROVALS REQUIRED PRIOR TO COMMENCEMENT OF WORK (Aug 2015) (This instruction relates only to any subcontracts awarded by LANS as a result of this RFP).

Exhibit G, Security Requirements within the LANS Model Subcontract documents, specifies all security documents and/or approvals that may be required prior to commencing work, in addition to security requirements applicable to subcontract performance.

15. INTELLECTUAL PROPERTY (This instruction relates only to NRE subcontracts awarded as a result of this RFP).

DOE/NNSA has granted a class advance waiver on intellectual property for NRE subcontract awards under this project that will allow an awardee that is a domestic large business, and any domestic first tier subcontractor of that awardee, to assert copyright to its works of authorship and to elect title to its subject inventions without prior approval from the Government, subject to the following conditions and DOE Patent Counsel certification of subcontractor qualification for the waiver.

Cost sharing is a condition of the class advance waiver for a large business awardee. In accordance with DOE requirements, a large business must fund at least 40% of the total price of performance under its subcontract to have the class advance waiver language included in that subcontract. All Offerors shall include the total price of performance in their proposals and Offerors that are large businesses must make a specific assertion accepting the 40% share (or

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offering to share more than 40%) in order to obtain the terms of the class advance waiver. Offerors that are large businesses, that do not accept the 40% share, and that may be selected for award will be subject to the existing FAR and DEAR intellectual property clauses in the terms and conditions incorporated in the LANS and UC Sample NRE Subcontracts.

A large business Offeror that desires a lower cost share percentage or different terms than those granted in the class advance waiver will be required to negotiate directly with DOE/NNSA. Such negotiations are ordinarily time consuming and it is anticipated the timing of these negotiations will not allow LANS and UC to maintain their schedules for this project. As a result, LANS and UC may view the Offeror's proposal less favorably than a proposal from another Offeror that is willing to cost share at least 40% and accept the class advance waiver provisions.

Offerors that are small businesses or non-profit entities and that may be selected for award should note that the class advance waiver provisions for patents will not be included in any resulting subcontracts. By statute, a small business may elect title to its subject invention under the clause DEAR 952.227-11 Patent Rights-retention by the contractor.

Foreign owned or controlled Offerors and proposed foreign owned or controlled subcontractors to an Offeror at any tier are not eligible to receive the class advance waiver provisions. These entities will be subject to the existing FAR and DEAR intellectual property clauses in the terms and conditions incorporated in the LANS and UC Sample NRE Subcontracts.

16. STATEMENT OF WORK CONFIGURATION REVIEW

A configuration/solution for each of the two anticipated Build subcontracts will be negotiated with the successful Offeror(s) based on responses to the RFP Technical Requirements Document issued with the RFP. Based on the results of the successful Offeror's work in the anticipated Non-Recurring Engineering (NRE) subcontracts, ACES and NERSC will each independently negotiate with the successful Offeror(s) to determine final configurations/solutions for their respective Build subcontracts. The affirmation of agreed upon configurations/solutions for the Crossroads and NERSC-9 Systems will be documented through bilateral modification to the Scope of Work and Technical Specifications for each Build subcontract. Clauses for this provision are included in the Sample Build subcontracts (see Exhibit B, SC-201 of the LANS (ACES) Sample Build subcontract and Article 2 of the UC (NERSC) Sample Build subcontract).

17. SOFTWARE LICENSE AGREEMENT OR MAINTENANCE AGREEMENT (Oct 2014)

Any software license agreement or any maintenance agreement that you propose shall be included with your Proposal. However, in order for the agreement to be made a part of any resulting subcontract, it must be approved in writing by LANS or UC and incorporated by reference into their respective subcontracts. In the event of a conflict or inconsistency between the terms and conditions contained in your software license agreement / maintenance agreement and the terms and conditions of the resultant subcontract(s), the terms and conditions of the subcontract shall take precedence.

18. GREEN / SUSTAINABLE PRODUCTS (Oct 2014) (This instruction relates only to any subcontracts awarded by LANS as a result of this RFP).

Whenever possible, you shall offer green/sustainable products and repair/spare parts, which meet the (1) minimum content levels for sustainable products or (2) Environmental Program certification or (3) product attributes, listed at the Sustainable Facilities Tool website found at <http://www.sftool.gov/greenprocurement>. Minimum content levels, environmental program certifications and product attributes, if any, are listed under the column titled "Procurement Info" for each product.

19. LANS PROCUREMENT PROTEST PROCESS (Dec 2015)

This Protest process provides Offerors with an opportunity to resolve concerns with a LANS' procurement prior to submitting a demand to arbitrate, pursuant to the Agreement to Arbitrate.

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Completion of this process is a prerequisite to filing a demand for arbitration pursuant to the Agreement to Arbitrate.

This protest process applies to any concerns with LANS' conduct of the solicitation process, including but not limited to the evaluation of proposals. Any concerns that are specific to UC/LBNL's conduct will be resolved using UC/LBNL protest procedures. UC/LBNL will provide its protest procedures upon receipt of a protest.

Definitions

Agreement to Arbitrate means binding arbitration in accordance with the Agreement to Arbitrate executed by Offeror and submitted with its Proposal.

Offeror is a legal entity submitting a proposal in response to a LANS solicitation.

Protest is a written objection, submitted by an unsuccessful Offeror after receiving a notice of non-award. A Protest may be filed only by an Offeror that has submitted a proposal in response to the LANS solicitation that is the subject of the Protest.

Protest Official is the official designated by LANL Laboratory Director to review and decide the Protest.

Note: A size challenge by an Offeror alleging that another Offeror does not meet the Small Business Administration (SBA) size standards for the given NAICS code is NOT a Protest. The LANS Subcontract Administrator shall refer the parties to the SBA, who shall make the determination, which shall be final and binding upon all parties.

Pre-Protest Resolution Efforts: Offerors who desire an explanation or interpretation of one or more Solicitation documents, must submit questions in writing in accordance with the *Examination Of Solicitation Documents* provision above. If an Offeror knew or through reasonable efforts should have known of an issue concerning the Solicitation documents and fails to raise that issue, that Offeror will be barred from raising that issue in a subsequent Protest.

Prior to submission of a Protest, Offerors shall raise any concerns about the solicitation process to the LANS Subcontract Administrator, who will use his/her best efforts to address concerns through frank and informal communications.

Time for Filing a Protest: Upon notice of non-award, an Offeror, who believes that LANS' conduct was inconsistent with the Solicitation and prejudiced the Protester, may file a Protest. The Protest must be received by the LANS Subcontract Administrator, who issued the notice of non-award, no later than ten (10) business days after the date the email is sent providing notice of non-award or no later than ten (10) business days after a debriefing. Protests that are filed prior to LANS issuing a notice of non-award, or more than ten (10) business days after the notice of non-award is transmitted, or more than ten (10) business days after a debriefing, will be dismissed as untimely. Regardless of the filing of a Protest, LANS may award the subcontract.

Submittal of Protest: A Protest must be submitted to the LANS Subcontract Administrator in writing, preferably via email. The LANS Subcontract Administrator will then forward the Protest to the Protest Official, along with the Protest Record.

Awardee Intervention: Upon the request of the Awardee, at the Protest Official's sole discretion, the Protest Official may allow the Awardee to intervene as a party to the Protest proceeding (Intervenor).

Confidentiality Agreement/Protective Order: Parties to the Protest are required to cooperate and comply with the terms of a Confidentiality Agreement/Protective Order issued by the Protest Official to allow the parties and their outside counsel appropriate access to solicitation-related documentation that contain proprietary information.

Protest Content: A Protest must be signed and must contain the following:

- The name, mailing and email address and telephone number(s) of the Protester and his/her attorney, if any;

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- The Solicitation number sufficient for identification;
- A detailed statement of the legal and factual grounds for the Protest, including a description of LANS' conduct that was inconsistent with the Solicitation and prejudiced the Protester;
- Copies of relevant documents; and
- A request for a ruling and statement as to the relief requested, subject to limits specified herein.

No Discovery: Neither the Protester nor LANS will have the right to conduct discovery in this process.

Protest Record: The Protest Record shall be prepared by the LANS Subcontract Administrator and submitted to the Protest Official within ten (10) business days of receipt of the Protest. The Protest Record will not be made available to the Protester in order to protect the confidential, competitive information related to other Offerors. The Protest Record prepared by the Subcontract Administrator shall contain the following documents:

- A complete copy of the Protest;
- A complete copy of the protested Solicitation and subcontract;
- A complete copy of the Source Selection Plan, when applicable;
- All documentation of the evaluation and selection process used, including any memoranda or evaluation documentation generated by LANS;
- A complete copy of the Procurement Summary, if it has been prepared;
- A complete copy of the Protester's Proposal;
- Any correspondence between Offeror(s) and LANS with respect to the challenged solicitation/subcontract;
- A memorandum from the LANS Subcontract Administrator which responds in detail to the Protester's allegations;
- A recommendation for corrective action, if any; and
- Additional information and documentation considered relevant to the protested solicitation and/or subcontract.

Determination of Solicitation or Subcontract Suspension: Within ten (10) business days of receiving the Protest Record, the Protest Official will determine in his/her sole discretion whether to direct that the solicitation or subcontract be suspended. A decision to suspend the solicitation or subcontract may only be made if doing so is in the best interest of LANS. Further, any decision to suspend the solicitation or subcontract may be reconsidered at any time while the Protest is pending. If the solicitation or subcontract is suspended, the LANS Subcontract Administrator will inform Offerors who might become eligible for award of the subcontract and request that they keep their Proposals open pending resolution of the Protest, to avoid the possible need for re-solicitation in the event the protest is sustained.

Protest Resolution:

A protest may be summarily dismissed by the LANS Subcontract Administrator if it has not been filed by an Offeror or its counsel.

A protest may be summarily dismissed by the Protest Official if it:

- Has not been filed in a timely manner;
- Did not contain the required information;
- Fails to state grounds sufficient to justify relief; or
- Is frivolous.

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If a Protest is summarily dismissed, the Protest Official will issue a written decision to that effect outlining his/her basis for the dismissal.

If a Protest is not summarily dismissed, the Protest Official, upon review of the Protest Record, will determine whether any additional evidence should be gathered.

If the Protest Official deems oral or written arguments necessary to disposition the protest, he/she will establish deadlines for oral or written arguments.

Standard of Review: The Protest Official is not required to limit his/her inquiry to the specific issues raised in the Protest. The Protest Official may uphold the Protest if he/she finds by a preponderance of the evidence that the conduct of those individuals acting on behalf of LANS was inconsistent with the Solicitation provisions and prejudiced the Protester. To find Prejudice, the Protest Official must conclude that LANS did not follow the solicitation provisions and that the failure to do so had a significant adverse impact on the evaluation of the Protester's Proposal. The Protest Official has broad discretion to take actions necessary to determine if LANS was inconsistent with the solicitation provisions and whether any inconsistencies resulted in Prejudice requiring that the Protest be upheld.

Protest Decision: The Protest Official or designee will notify the Protester in writing of his/her decision and will specify the relief to be granted, if any. LANS and the Parties will not publicly release the Protest Decision unless required by law. The Protest Official may at his/her discretion allow Protester's or Intervenor's outside counsel to review the decision for proprietary information. Notwithstanding the foregoing, the Protest Official, at his or her sole discretion, will determine whether the Protest Decision contains proprietary information and whether it can be released by outside counsel to the parties.

Relief: If the Protest Official concludes that the conduct of those individuals acting on behalf of LANS was inconsistent with the Solicitation provisions and prejudiced the Protester, as defined above, the Protest Official may direct that:

- the solicitation be amended to correct the deficiency(ies) and revised proposals requested from all Offerors;
- the solicitation be cancelled and written notification sent to all Offerors of such cancellation;
- the deficiency be corrected and the evaluation process be conducted again, if necessary;
- the subcontract be terminated and written termination notice sent to the subcontractor.

No other types of relief may be granted.

20. AGREEMENT TO ARBITRATE (Aug 2015)

Note: *An Offeror must sign and return the OFFEROR'S PROPOSAL LETTER, which contains the Agreement to Arbitrate shown below, in order to be considered for award of a subcontract.*

This Agreement to Arbitrate (Agreement) constitutes an express contract between Offeror and LANS and UC, regardless of who is awarded the subcontract. As consideration for this agreement, LANS and UC agree to consider the offeror's proposal for an award in exchange for the offeror's agreement to arbitrate as stated herein. **No arbitration may be initiated under this Agreement until an Offeror has complied with and completed the LANS' Procurement Protest Process, which is set forth in this Solicitation.** Any arbitration initiated prior to Offeror's completion of the Protest process will be dismissed for failure to exhaust administrative remedies. The scope of any arbitration initiated pursuant to this Agreement will be the issues raised in an Offeror's Protest and any new issues that were not and could not have been discovered prior to or during the Protest process.

The Solicitation is not a promise to contract, either express or implied. Any procurement conducted by LANS or UC in connection with this Solicitation will be conducted solely at LANS' and UC's discretion. LANS and UC reserve the right to make any award, or no award, in connection with this Solicitation, in their sole discretion and in the best interests of LANS, UC, and the Government.

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By responding to this Solicitation, Offeror agrees that, except for controversies or claims that are specific to the conduct of UC/LBNL which will be resolved using UC/LBNL protest procedure, any controversy or claim arising out of or relating to this Solicitation, any evaluation or selection process in connection with this Solicitation, or any award decision based on this Solicitation shall be settled by an arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and the provisions of this Agreement. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(a) Arbitrator

An arbitration initiated under this Agreement shall be decided by one arbitrator. The Offeror initiating arbitration shall be provided with a list of at least five (5) potential arbitrators identified by LANS and UC from the National Roster of commercial arbitrators certified by the American Arbitration Association. The Offeror shall select the arbitrator of its choice from that list, subject to the availability of the arbitrator and absent any conflicts of interest between the selected arbitrator and the Offeror.

(b) Choice of Law

An arbitration initiated under this Agreement shall be decided under and governed by the laws of the State of New Mexico. The enforceability of this Arbitration Agreement will be determined under the laws of the State of New Mexico.

(c) Limitation of Remedies

- (i) In no event shall an award in an arbitration initiated under this Agreement exceed the actual, reasonable cost of the preparation of Offeror's proposal, plus actual and reasonable attorneys' fees and costs incurred in the arbitration.
- (ii) The arbitrator shall not under any circumstances award expectancy damages, consequential damages, "lost profits" damages, special damages, punitive damages, or any remedy or relief other than the remedy identified in subparagraph (i) above.
- (iii) Any award in an arbitration initiated under this Agreement shall be limited to the relief identified in subparagraph (i), and shall not include any injunction, other equitable relief or direction to any party other than the direction to pay a monetary amount.

(d) Arbitration Deadline

Any demand for arbitration initiated under this Agreement shall be brought no later than thirty (30) business days from the Protest Official's final decision on an Offeror's Protest.

(e) Limitations on Discovery in Arbitration

- (i) Within ten (10) business days from the appointment of an arbitrator, LANS shall file with the arbitrator and produce to the Offeror a file consisting of all documents and other tangible things relevant to the Offeror's claim and to the procurement action(s) which is/are the subject of the arbitration (the Arbitration File). The Arbitration File will include a complete copy of the Solicitation and proposed subcontract, documentation of the procurement and selection process, correspondence between the parties that is relevant to the arbitration, and all documents on which LANS and UC relied in making the procurement decision(s) that are the subject of the arbitration. The Arbitration File may be supplemented by either party upon approval by the arbitrator.
- (ii) Discovery in the arbitration will generally be governed by the New Mexico Rules of Civil Procedure for the District Courts, with the following limitations:
 - (A) Each party will be limited to taking no more than three (3) depositions, unless the arbitrator finds good cause to permit additional depositions.
 - (B) Written discovery shall be limited to no more than twenty-five (25) requests for production of documents, and shall not include interrogatories or requests for admission, unless the arbitrator finds good cause to allow discovery beyond the limitations of this paragraph.

- (iii) The arbitrator may further limit discovery and/or issue any necessary protective orders as provided in the New Mexico Rules of Civil Procedure for the District Courts.
- (f) **Standard of Review**

The following standard of review shall apply to the arbitration. The Arbitrator may only grant relief if he or she finds substantial evidence that LANS' / UC's conduct was inconsistent with the Solicitation and prejudiced the Offeror. To demonstrate prejudice, the Offeror must show that there was a substantial likelihood that it would have received the subcontract but for LANS' and UC's conduct.
- (g) **Costs of Arbitration**

The cost of the arbitrator's fees, any American Arbitration Association administrative fees, and costs of the arbitration shall be borne by the losing party.
- (h) **Locale**

The location of the arbitration shall be Los Alamos, New Mexico, or any other location mutually agreed upon by the parties.