



OFFICE OF THE VICE PRESIDENT —  
LABORATORY MANAGEMENT

OFFICE OF THE PRESIDENT  
1111 Franklin Street, 5<sup>th</sup> Floor  
Oakland, California 94607-5200

February 27, 2004

Mr. Richard H. Nolan  
Director, Berkeley Site Office  
United States Department of Energy  
Lawrence Berkeley National Laboratory  
1 Cyclotron Road, Mail Stop 90R1023  
Berkeley, CA 94720

Re: DOE Solicitation for a Contract to Operate the Lawrence Berkeley National Laboratory

Dear Mr. Nolan:

The University has examined the existing arrangements with DOE for management and operation of the Lawrence Berkeley National Laboratory to determine whether there are any contract changes or agreements that must occur prior to DOE formulating a solicitation for a new management and operating contract. As described below, we do not feel that there are any actions that DOE must take before issuing a solicitation. However, the University has noted six matters of which potential contractors other than the University need to be made aware that would affect transition planning in the event that the University no longer manages the laboratory:

- Lease and occupancy of University lands and premises
- Successor contractor liability to the University
- Implications of the California Environmental Quality Act (CEQA)
- Existing bargaining agreements covering employees
- Joint appointments of research staff between the Laboratory and University campuses
- A "successor" pension plan to the University of California Retirement Program

Lease and occupancy of University lands and premises

DOE has secured long-term access and use of most of the University land utilized by the Lawrence Berkeley National Laboratory. There is a portion of land and premises for which DOE's rights are currently limited to the term of Contract 98 plus 3 years. The period of time following contract termination specified in the prime contract is intended

to permit the parties to determine future needs once contract termination in fact occurs. Given the long-term leases on the balance of the Laboratory site, the University has no current plans to occupy or otherwise convert any Laboratory premises to University use; the University is prepared to negotiate an appropriate extension for the expired leases and occupancy agreements. DOE should defer such negotiations until a contract has been awarded to a contractor other than the University for two reasons: (1) the negotiation should reflect the decisions and requirements of DOE regarding the terms of the successor contract and any other plans incorporated from the accepted proposal, and (2) the Regents will need to make a CEQA determination associated with the extension of time on the lease and occupancy agreement and such an assessment may be impractical without knowing DOE's plans as provided in a successor contract. In the University's view the government need only indicate in its solicitation that DOE will take any necessary action to secure the needed University-owned land and premises for Laboratory operations.

#### Successor Contractor Liability to the University

The current prime contract makes allowable to the University the costs liabilities to third persons and other costs associated with operating the Laboratory. In the event that another contractor operates the Laboratory, DOE will need to defend and hold harmless the University from claims arising from operations on University-owned lands and premises after contract termination, or require that a successor contractor do so. The solicitation should reflect any determination of the government that a successor contractor will be required to provide liability protection to the University.

#### Implications of the California Environmental Quality Act (CEQA)

With regard to activities on University-owned lands, DOE should require a successor contractor to conduct activities consistent with the University's approved Long Range Development Plan (LRDP) for the Laboratory and covered by the Environmental Impact Report for the LRDP. Projects not consistent with the LRDP or creating impacts not addressed by or more severe than those analyzed in the LRDP EIR would require Regents' approval and possible subsequent California Environmental Quality Act (CEQA) documentation. If so, the successor contractor should be required to provide the University with the information and assistance necessary to make any appropriate determinations under CEQA.

#### Existing bargaining agreements covering employees

Part of the workforce of the Laboratory is covered by University-wide bargaining agreements. Employees covered by these agreements will become disaffiliated in the event they become employed by a successor contractor. The University will provide details to DOE on the bargaining agreements and covered personnel; DOE needs to provide this information to potential bidders along with any requirements for bargaining unit representation in a successor contract. No action need be taken at this time other than to provide information to potential bidders.

Joint appointments of research staff between the Laboratory and University campuses

The Laboratory and University campuses have 614 joint appointments involving faculty and graduate students. All but a handful involve reimbursement for work at the Laboratory during periods when the campuses are not in session. These appointments have been of mutual benefit to the Laboratory and campuses and common corporate ownership have simplified the arrangements as well. A successor contractor would benefit greatly from continuing to employ most, if not all, of the individuals who are currently shared under a joint appointment arrangement. No special agreement need be reached to do this; the successor contractor can simply offer part-time employment to them. For those few cases where a joint appointment involves scientific leadership at the laboratory, the University is prepared to negotiate with any successor contractor an arrangement to continue to make such individual(s) available to a successor contractor should that be necessary or desirable.

A "successor" pension plan to the University of California Retirement Program (UCRP)

The prime contract between the University and DOE contemplates various situations in which assets and liabilities in UCRP attributable to laboratory members of the plan may be transferred to a successor plan. The government need not define and create a successor plan in advance of a contract award; it need only include in the solicitation the requirement that bidders propose a plan that meets the descriptions of the "successor" plan in the prime contract. In the event that the winning bidder does so and the government accepts the proposal, designated UCRP assets and liabilities would be transferred as part of a transition activity provided the appropriate rulings and approvals from federal and state agencies, including the IRS, have been received by the University and the successor contractor, consistent with subparagraph (f)(3) of Clause 13.4.

As indicated above, the University believes that there are no matters that require a modification of the agreement between the University and DOE in advance of a solicitation.

If you have any questions please contact Ron Nelson at (510) 987-0800.

Sincerely,



Robert L. Van Ness  
Associate Vice President

cc: Laboratory Deputy Director Benson  
✓Executive Director Nelson