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Appendix IV

REPRESENTATIONS AND CERTIFICATIONS FOR LANS SOLICITATION/SUBCONTRACT NUMBER: 162505-1

These Representations and Certifications must be completed, signed and returned with your offer, quotation, proposal or bid. All sections must be completed; however, if a section or portion of a section is not applicable, check the N/A box on the left side of the section or portion thereof. As used herein, the term "subcontract" shall also mean "purchase order." **FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM MAY BE CAUSE FOR LOS ALAMOS NATIONAL SECURITY, LLC, (LANS) TO REJECT YOUR OFFER.**

1. OFFEROR INFORMATION *(Applies to all solicitations)*

Company name: The Pennsylvania State University

Company address: Office of Sponsored Programs, 110 Technology Center Bldg, University Park, PA 16802

Remit to address: Research Accounting, Ste 401, 227 West Beaver Ave, State College, PA 16801-4819

Telephone Number: (814) 865-7525 Fax Number: (814) 865-3910

Taxpayer Identification No.: 24-6000376 *(Employer Identification Number or Social Security Number)*

D-U-N-S Number: 00-340-3953

Authorized Negotiator (AN): Robin Riglin AN Title: Grants & Contracts Manager

AN Telephone: (814) 865-1372 AN Fax: (814) 865-3377 AN Email: osp@psu.edu

2. TYPE OF BUSINESS ORGANIZATION *(Applies to all solicitations)*

(a) Legal name of business organization, if different from company name:

same

(b) The Offeror represents that it operates as a: *(Check applicable category and provide additional information, if requested.)*

- sole proprietorship or individual
- partnership comprised of the following partners _____

corporation incorporated under the laws of the State of _____

limited liability company organized under the laws of the State of _____

educational institution

government entity

federal

state

local

international organization (per 22 U.S.C. 288-288f)

nonprofit organization

joint venture comprised of the following entities _____

other *(Describe below.)* _____

State Related Institution of Higher Education

(c) For purposes of the following representations, Northern New Mexico (NNM) includes the counties of Taos, Santa Fe, Rio Arriba, Sandoval, Mora, San Miguel, and Los Alamos, and the eight regional Pueblos of Nambe, Ohkay Owingeh (formerly known as San Juan), Picuris, Pojoaque, San Ildefonso, Santa Clara, Taos, and Tesuque.

N/A The Offeror represents that for the calendar year preceding the submission of its bid/offer: *(Check any and all that apply. If none apply, check the N/A box located to the left.)*

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

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.

(If an offeror claims to have a facility in NNM and the company address provided in section 1 above is not located in NNM, provide the information requested below that will support the NNM representation.)

Physical Address: _____

Telephone Number: _____ Fax Number: _____

N/A 3. FAR 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (Sep 2007) (Deviation) *(Applies to solicitations expected to exceed \$100,000. If the solicitation is not expected to exceed \$100,000, check the N/A box located left of the title.)*

(a) Definitions. As used in this provision—"lobbying contact" has the meaning provided at 2 U.S.C. 1602(8). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in FAR 52.203-12 *Limitation on Payments to Influence Certain Federal Transactions (Sep 2007)*.

(b) Prohibition. The prohibition and exceptions contained in FAR 52.203-12 *Limitation on Payments to Influence Certain Federal Transactions (Sep 2007)* are hereby incorporated by reference in this provision.

(c) Certification. The offeror, by signing these representations and certifications, hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.

(d) Disclosure. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this subcontract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(e) Penalty. Submission of this certification and disclosure is a prerequisite for making or entering into this subcontract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

N/A 4. **FAR 52.209-5 CERTIFICATION REGARDING RESPONSIBILITY MATTERS (Dec 2008) (Deviation)**
(Applies to solicitations expected to exceed \$100,000. If the solicitation is not expected to exceed \$100,000, check the N/A box located left of the title.)

(a) (1) The Offeror certifies, to the best of its knowledge and belief, that: (Check appropriate responses.)

(i) The Offeror and/or any of its Principals—

- (A) Are presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
 Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
- (B) Have, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
 Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
- (C) Are presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision;
 Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision;
- (D) Have, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.
 Have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

- (i) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
- (ii) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) *Examples.*

- (i) *The taxpayer has received a statutory notice of deficiency, under I.R.C. § 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax*

Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) *The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. § 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.*

(iii) *The taxpayer has entered into an installment agreement pursuant to I.R.C. § 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.*

(iv) *The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).*

- (ii) The Offeror has, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.
 The Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principal," for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment; and similar positions).

- (b) The Offeror shall provide immediate written notice to the Subcontract Administrator if, at any time prior to subcontract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Subcontract Administrator may render the Offeror nonresponsible.
- (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to LANS, the Subcontract Administrator may terminate the subcontract resulting from this solicitation for default.

N/A 5. **DEAR 952.209-8 ORGANIZATIONAL CONFLICTS OF INTEREST DISCLOSURE - ADVISORY AND ASSISTANCE SERVICES (Jun 1997) (Deviation)** *(Applies to solicitations for advisory and assistance services, as those services are defined in FAR subpart 2.101, exceeding \$100,000. If this solicitation is not for advisory and assistance services exceeding \$100,000, check the N/A box located left of the title.)*

- (a) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to LANS or the Government, or the person's objectivity in performing the subcontract work is or might be otherwise impaired, or a person has an unfair competitive advantage.
- (b) An offeror notified that it is the apparent successful offeror shall provide the statement described in paragraph (c) of this provision. For purposes of this provision, "apparent successful offeror" means the proposer selected for final negotiations or, where individual subcontracts are negotiated with all firms in the competitive range, it means all such firms.
- (c) The statement must contain the following:
 - (1) A statement of any past (within the past twelve months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work. For contractual interests, such statement must include the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to LANS, the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract/subcontract number under which the services were rendered must also be included, if applicable. For financial interests, the statement must include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests enough such information must be provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work.
 - (2) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant subcontract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the subcontract in question has been communicated as part of the statement required by (b) of this provision.
- (d) Failure of the offeror to provide the required statement may result in the offeror being determined ineligible for award. Misrepresentation or failure to report any fact may result in the assessment of penalties associated with false statements or such other provisions provided for by law or regulation.

REPRESENTATION (*Either the Representation or the Disclosure section must be checked, but not both.*)
 I hereby certify that, as a representative of my organization, to the best of my knowledge and belief, no facts exist concerning any past, present, or currently planned interests or activities (financial, contractual, organizational, or otherwise) which relate to the proposed work and bear on whether the organization has a possible conflict of interest with respect to (1) being able to render impartial, technically sound, and/or objective assistance or advice; or (2) being given an unfair competitive advantage.

DISCLOSURE (*Either the Representation or the Disclosure section must be checked, but not both.*)
 A statement of any past (within the past twelve months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work is submitted herewith.

Representation:

A completed Representation must be provided by the Offeror for each of its consultants and subcontractors who will perform work similar to that to be performed by the Offeror and for each of its chief executives and directors, and those of its consultants and subcontractors performing similar services, who will be directly involved in performance of the subcontract.

LANS and DOE/NNSA:

No award shall be made until the Representation or Disclosure has been evaluated by LANS and/or the customer (DOE/NNSA). LANS and/or the customer will review the Representation or Disclosure and may require additional information from the Offeror. All information received from the Offeror and any other relevant

information known to LANS or DOE/NNSA will be used to determine whether an award to the Offeror may create an OCI with respect to the Offeror (1) being able to render impartial, technically sound, and/or objective assistance or advice; or (2) being given an unfair competitive advantage. If an OCI is found to exist, LANS, at its sole discretion, may (1) impose appropriate conditions which avoid or mitigate such conflict; (2) disqualify the Offeror; or (3) determine that it is otherwise in the best interest of the government or customer to contract with the Offeror in face of an OCI.

Disqualification or Termination:

The refusal to provide the Representation or Disclosure, and any additional information which is requested, shall result in disqualification of the Offeror for award. The nondisclosure or misrepresentation of any relevant facts may also result in the disqualification of the Offeror for award. If such nondisclosure or misrepresentation is discovered after award, the resulting subcontract may be terminated for default. The Offeror may also be disqualified from subsequent, related LANS subcontracts and be subject to other remedial action as permitted or provided by law or in the resulting subcontract. The attention of the Offeror in complying with this provision is directed to 18 U.S.C. 1001.

N/A 6. **FAR 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (May 2004) (Deviation)** (Applies when the subcontract is to be performed in the United States or its outlying areas. If the subcontract will not be performed in the U.S. or its outlying areas, check the N/A box located left of the title.)

(a) The following listed NAICS code and size standards are applicable solely for the Offeror's representation in paragraph (b) below:

- (1) The North American Industry Classification System (NAICS) code for this acquisition is 541712.
- (2) The small business size standard for the listed NAICS code is 500 employees.
- (3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service subcontract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) **Representations.**

(1) The Offeror represents as part of its offer that: (Check appropriate box.)

- It is a small business concern.
 It is not a small business concern.

(2) If the Offeror represents that it is a small business concern, the Offeror further represents that: (Check all that apply.)

- It is a women-owned small business concern.
 It is a veteran-owned small business concern.
 It is a service-disabled veteran-owned small business concern.
 It is a small disadvantaged business concern as defined in 13 CFR 124.1002.
 It is an Indian-owned small business concern.
 It is an 8(a) small business concern and appears on the List of Qualified 8(a) Small Business Concerns maintained by the U.S. Small Business Administration (SBA) and is based on the criteria established in 13 CFR 124.101-112.
 It is a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the SBA; and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the SBA in accordance with 13 CFR part 126.
 It is a joint venture that complies with the requirements of 13 CFR part 126; and the representation in the paragraph above is accurate for the HUBZone small business concern or concerns that are participating in the joint venture.

(The Offeror shall enter the name or names of the HUBZone small business concern or concerns below that are participating in the joint venture. Furthermore, each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation shown above.)

(c) **Definitions.**

"*Indian*", as defined in FAR subpart 26.101, means a person who is a member of an Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601);

"*Indian-owned small business concern*" means a small business concern (i) not less than 51 percent of which is owned by one or more Indians or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more Indians; and (ii) the management and daily business operations of which are controlled by one or more Indians.

"*Service-disabled veteran-owned small business concern*" means a small business concern (i) not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and (ii) the management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

"*Service-disabled veteran*" means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"*Small business concern*" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard listed above.

"*Veteran-owned small business concern*" means a small business concern (i) not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and (ii) the management and daily business operations of which are controlled by one or more veterans.

"*Women-owned small business concern*" means a small business concern (i) that is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and (ii) whose management and daily business operations are controlled by one or more women.

An "*8(a) small business concern*" means a small business concern owned and operated by socially and economically disadvantaged individuals and eligible to receive federal contracts under the U.S. Small Business Administration's 8(a) Business Development Program and that appears on the List of Qualified 8(a) Small Business Concerns maintained by the U.S. Small Business Administration.

- (d) **Notice.** Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract or subcontract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall:
- (1) Be punished by imposition of fine, imprisonment, or both;
 - (2) Be subject to administrative remedies, including suspension and debarment; and
 - (3) Be ineligible for participation in programs conducted under the authority of the Act.

N/A 7. **FAR 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (Feb 1999) (Deviation)** (Applies to solicitations greater than \$10,000, unless one of the exemptions to the Equal Opportunity clause (i.e., FAR 52.222-26) listed in FAR Subpart 22.807(b) is applicable. If the solicitation is for \$10,000 or less, or another one of the exemptions listed in FAR 22.807(b)(1) applies, check the N/A box located left of the title.)

The Offeror represents that: (Check appropriate responses.)

- (a) It has participated in a previous contract or subcontract subject to the *Equal Opportunity* clause of this solicitation.
- It has not participated in a previous contract or subcontract subject to the *Equal Opportunity* clause of this solicitation.
- (b) It has filed all required compliance reports. **Note:** *If an offeror has not participated in a previous contract or subcontract subject to FAR 52.222-26, Equal Opportunity, the offeror will have filed all required compliance reports, since none were required.*
- It has not filed all required compliance reports.
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

N/A 8. **FAR 52.222-25 AFFIRMATIVE ACTION COMPLIANCE (Apr 1984) (Deviation)** *(Applies to solicitations greater than \$10,000, unless one of the exemptions to the Equal Opportunity clause (i.e., FAR 52.222-26) listed in FAR Subpart 22.807(b) is applicable. If the solicitation is for \$10,000 or less, or another one of the exemptions listed in FAR 22.807(b)(1) applies, check the N/A box located left of the title.)*

The Offeror represents that: *(Check appropriate responses.)*

- (a) It has developed and has on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2).
- It has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2).

or

- (b) It has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

Note: Each non-construction subcontractor with 50 or more employees and a subcontract of \$50,000 or more, is required to develop a written affirmative action program for each of its establishments. An affirmative action program means a contractor's program that complies with Department of Labor regulations to ensure equal opportunity in employment to minorities and women.

Note: Each construction contractor that holds a nonexempt (see FAR Subpart 22.807) construction contract is required to meet affirmative action requirements and applicable requirements of 41 CFR 60-1, Obligations of Contractors and Subcontractors, and 41 CFR 60-4, Construction Contractors – Affirmative Action Requirements.

N/A 9. **FAR 55.222-38 COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (Dec 2001)** *(Applies to solicitations exceeding \$100,000 that are not for acquisition of commercial items. If this solicitation does not exceed \$100,000 or is for the acquisition of commercial items, check the N/A box located left of the title. If this representation applies, but the Offeror has not submitted the most recent VETS-100 report, notify the LANS Subcontract Administrator.)*

By submission of its offer, the Offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (i.e., if it has any contract containing Federal Acquisition Regulation clause 52.222-37, *Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans*), it has submitted the most recent VETS-100 Report required by that clause.

N/A 10. **FAR 52.222-48 EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT ACT TO CONTRACTS FOR MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT - CERTIFICATION (Feb 2009) (Deviation)** *(Applies in solicitations when FAR 52.222-41, Service Contract Act of 1965, is applicable, but where the subcontract may be exempt from the SCA in accordance with FAR Subpart 22.1003-4(c). If FAR 52.222-41 is not applicable to this solicitation, check N/A box located left of title.)*

(a) The offeror shall check the following certification:

CERTIFICATION *(Check appropriate response.)*

- The offeror does certify that—
 The offeror does not certify that—

- (1) The items of equipment to be serviced under this subcontract are used regularly for other than Government purposes, and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontractor) in substantial quantities to the general public in the course of normal business operations;
- (2) The services will be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of equipment.
 - (i) An "established catalog price" is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the offeror, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.
 - (ii) An "established market price" is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or offeror; and
- (3) The compensation (wage and fringe benefits) plan for all service employees performing work under the subcontract are the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

(b) Certification by the offeror as to its compliance with respect to the subcontract also constitutes its certification as to compliance by its lower-tier subcontractor(s) if it subcontracts out the exempt services. If the offeror certifies to the conditions in paragraph (a) of this provision, and LANS determines in accordance with FAR 22.1003-4(c)(3) that the Service Contract Act—

- (1) Will not apply to this offeror, then the Service Contract Act of 1965 clause in this solicitation will not be included in any resultant subcontract to this offeror; or
- (2) Will apply to this offeror, then the clause at 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements, in this solicitation will not be included in any resultant subcontract awarded to this offeror, and the offeror may be provided an opportunity to submit a new offer on that basis.

(c) If the offeror does not certify to the conditions in paragraph (a) of this provision—

- (1) The clause in this solicitation at 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements, will not be included in any resultant subcontract awarded to this offeror; and
- (2) The offeror shall notify LANS as soon as possible, if LANS did not attach a Service Contract Act wage determination to the solicitation.

(d) LANS may not make an award to the offeror, if the offeror fails to execute the certification in paragraph (a) of this provision or to contact LANS as required in paragraph (c) of this provision.

N/A 11. **FAR 52.222-52 EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT ACT TO CONTRACTS FOR CERTAIN SERVICES - CERTIFICATION (Nov 2007) (Deviation)** *(Applies in solicitations when FAR 52.222-41, Service Contract Act of 1965, is applicable, but the subcontract may be exempt from the SCA in*

accordance with FAR Subpart 22.1003-4(d). If FAR 52.222-41 is not applicable to this solicitation, check N/A box located left of title.)

(a) The offeror shall check the following certification:

CERTIFICATION (Check appropriate response.)

- The offeror does certify that—
- The offeror does not certify that—

- (1) The services under the subcontract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt lower-tier subcontract) to the general public in substantial quantities in the course of normal business operations;
- (2) The subcontract services are furnished at prices that are, or are based on, established catalog or market prices. An "established catalog price" is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the offeror, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An "established market price" is a current price, established in the usual course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or offeror;
- (3) Each service employee who will perform the services under the subcontract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the subcontract period if the subcontract period is less than a month) servicing the subcontract; and
- (4) The offeror uses the same compensation (wage and fringe benefits) plan for all service employees performing work under the subcontract as the offeror uses for these employees and for equivalent employees servicing commercial customers.

(b) Certification by the offeror as to its compliance with respect to the subcontract also constitutes its certification as to compliance by its lower-tier subcontractor(s) if it subcontracts out the exempt services. If the offeror certifies to the conditions in paragraph (a) of this provision, and LANS determines in accordance with FAR 22.1003-4(d)(3) that the Service Contract Act—

- (1) Will not apply to this offeror, then the Service Contract Act of 1965 clause in this solicitation will not be included in any resultant subcontract to this offeror; or
- (2) Will apply to this offeror, then the clause at FAR 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements, in this solicitation will not be included in any resultant subcontract awarded to this offer, and the offeror may be provided an opportunity to submit a new offer on that basis.

(c) If the offeror does not certify to the conditions in paragraph (a) of this provision—

- (1) The clause of this solicitation at 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements, will not be included in any resultant subcontract to this offeror; and
- (2) The offeror shall notify LANS as soon as possible if LANS did not attach a Service Contract Act wage determination to the solicitation.

(d) LANS may not make an award to the offeror, if the offeror fails to execute the certification in paragraph (a) of this provision or to contact LANS as required in paragraph (c) of this provision.

N/A 12. **FAR 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (Aug 2003) (Deviation)** (Applies in competitive subcontracts for acquisitions of non-commercial items expected to exceed \$100,000 including all options. Commercial item is defined in FAR Part 2.101. If this solicitation is for commercial items or non-commercial items not expected to exceed \$100,000 including all options, check the N/A box located left of the title.)

(a) Executive Order 13148, of April 21, 2000, Greening the Government through Leadership in Environmental Management, requires submission of this certification as a prerequisite for subcontract award.

(b) By signing this, the Offeror certifies that—

(1) As the owner or operator of facilities that will be used in the performance of this subcontract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the Offeror will file and continue to file for such facilities for the life of the subcontract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this subcontract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: (Check each block that is applicable.)

(i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

(ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(iv) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:
(A) Major group code 10 (except 1011, 1081, and 1094).
(B) Major group code 12 (except 1241).
(C) Major group codes 20 through 39.
(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).
(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, *et seq.*), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(v) The facility is not located in the United States or its outlying areas.

N/A 13. **FAR 52.225-2 BUY AMERICAN ACT CERTIFICATE (Feb 2009) (Deviation)** (Applies when FAR 52.225-1, Buy American Act - Supplies, is applicable. FAR 52.225-1 applies to the acquisition of supplies greater than \$3,000, and the acquisition of services involving the furnishing of supplies greater than \$3,000, for use within the United States. If FAR 52.225-1 will not apply to the resultant subcontract, check the N/A box located left of the title.)

(a) The Offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of "domestic end product." The terms "commercially available off-the-

shelf (COTS) item," "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act—Supplies."

(If the BAA is applicable: (1) list foreign end products, if any, below; and (2) if no foreign end products, write "None" below under the Foreign End Products column.)

(b) Foreign End Products:	Line Item No.:	Country of Origin:
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(c) LANS will evaluate offers in accordance with the policies and procedures of Part 25 of the FAR.

N/A 14. **FAR 52.227-15 REPRESENTATION OF LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE (Dec 2007) (Deviation)** (This representation applies when FAR 52.227-14, Rights in Data - General, will be included in a resultant subcontract (i.e., when technical data or computer software is expected to be produced or delivered). If FAR 52.227-14 will not be applicable to the subcontract, check the N/A box located left of title.)

(a) This solicitation sets forth LANS' known delivery requirements for data (as defined in DEAR 927-409). Any resulting subcontract may also provide LANS the option to order additional data under the *Additional Data Requirements* clause at FAR 52.227-16, if included in the subcontract. Any data delivered under the resulting subcontract will be subject to the *Rights in Data—General* clause at FAR 52.227-14 included in this subcontract. Under the latter clause, a subcontractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data instead. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides LANS the right to inspect such data at the subcontractor's facility.

(b) By completing the remainder of this paragraph, the Offeror represents that it has reviewed the requirements for the delivery of technical data or computer software and states— (Check appropriate response.)

(1) None of the data proposed for fulfilling the data delivery requirements qualifies as limited rights data or restricted computer software; or

(2) Data proposed for fulfilling the data delivery requirements qualify as limited rights data or restricted computer software and are identified as follows:

(c) Any identification of limited rights data or restricted computer software in the Offeror's response is not determinative of the status of the data should a subcontract be awarded to the Offeror.

Note: The terms "computer software", "data", "form, fit, and function data", "limited rights data", and "restricted computer software" are defined in DEAR 927.409 as follows:

Computer software means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes,

flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

Data means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. For the purposes of this clause, the term does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

Form, fit, and function data means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

Limited rights data means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (g)(2) of this section if included in this clause.

Restricted computer software means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (g)(3) of this section if included in this clause.

15. PERSONAL CONFLICT OF INTEREST CERTIFICATION *(Applies to all solicitations.)*

An affirmative response in the following certification will require LANS to evaluate your offer to determine whether a conflict of interest exists. A determination that a conflict of interest does exist may necessitate rejection of your offer. The fact that a LANS' employee, former employee, or near relative of an employee owns, controls, or has a significant financial interest in your organization will not, in and of itself, necessarily be cause for rejection of an offer.

Definitions:

Employee: Any person currently having an employee relationship with LANS or any member entity of LANS (i.e., Bechtel National, University of California, The Babcock and Wilcox Company, and the Washington Division of URS).

Near Relative: The employee's spouse, parents, siblings, children, and adoptive relatives, step relatives, and relatives-in-law in any of the above relationships.

Control: Having some right to direct or transfer property (even though there exists no actual title to the property, such as trusteeship, power of appointment, or contract) that could be the basis for influence upon the selection or decisions of an organization's management personnel.

Significant Financial Interest: Owning or controlling more than ten percent of the organization.

Certification: *(Check appropriate response.)*

An Employee or a Near Relative does own, control, or have a Significant Financial Interest in the Offeror's organization. That Employee or Near Relative is identified below together with the LANS entity where that person is employed:

An Employee or a Near Relative does not own, control, or have a Significant Financial Interest in the Offeror's organization.

16. CERTIFICATION REGARDING FORMER LANS OR UC EMPLOYEES *(Applies to all solicitations)*

- (a) Effective June 1, 2006, individuals who retire under LANS' Defined Benefit Pension Plan, who wish to begin a retirement benefit, are required to have a true and complete severance from LANS with no prior prearrangement for reemployment with LANS or any of LANS' affiliated companies or subcontractors to do similar work. This can be documented by completing a form at the time of termination stating that no prearrangement for reemployment existed prior to the termination, and by demonstrating a true and complete severance from LANS for at least one year before working for any of LANS' affiliated companies or subcontractors.
- (b) Effective June 1, 2006, individuals who retire under LANS' TCP 2 401(k) Retirement plan, before attaining age 59 ½, are required to have a true and complete severance from LANS with no prior prearrangement for reemployment with LANS or any of LANS' affiliated companies or subcontractors to do similar work. This can be documented by completing a form at the time of termination stating that no prearrangement for reemployment existed prior to the termination, and by demonstrating a true and complete severance from LANS for at least one year before working for any of LANS' affiliated companies or subcontractors. Individuals who retire under LANS' TCP 2 401(k) Retirement plan after age 59 ½ can be immediately reemployed.
- (c) An individual who retired under the University of California Retirement Plan (UCRP) or the Public Employees Retirement System (PERS) may be immediately reemployed by any of LANS' affiliated companies or subcontractors, unless that individual also retired under one of LANS' retirement plans in which case such individual must also comply with paragraph (a) or (b) above.
- (d) Any former employee of LANS or of the University of California (UC) who was terminated for cause or who resigned in lieu of termination for cause is prohibited from returning to work at Los Alamos National Laboratory (LANL) for a period of seven (7) years, unless there is a compelling reason to allow such individual to return to LANL sooner. Offeror and its lower tier subcontractors may not employ any former employee of LANS or of UC, who was terminated for cause or who resigned in lieu of termination for cause, for any on-site work at LANL or for any work under this subcontract in which such former employee may have any direct or indirect substantive contact with a current LANS employee, unless approved by LANS in writing prior to commencement of work by Offeror.
- (e) In order to assure compliance with paragraphs (a) through (d), Offeror shall, with respect to its employees who will be assigned to work under this subcontract and those of its lower tier subcontractors' employees who will be assigned to work under this subcontract, certify that all individuals who will be assigned to work under this subcontract are in compliance with the requirement of paragraphs (a) through (d) of this clause.
- (f) In making this certification Offeror and its lower tier subcontractors may rely on information provided by applicants for employment or current employees, so long as Offeror and its lower tier subcontractors have exercised due diligence and have, at a minimum, obtained the following information from each applicant or employee:
- (1) Whether the applicant or employee was a former UC or LANS employee, and if so, the date of separation;
 - (2) Whether the separation was the result of retirement, termination for cause, or resignation in lieu of termination for cause;
 - (3) Whether the applicant or employee is a member of LANS' Defined Benefit Pension Plan or LANS' TCP 2, 401(k) Plan; and
 - (4) Confirmation that, if the applicant or employee retired under one of LANS' retirement plans, to the extent described above, the applicant had no prior prearrangement for reemployment by Offeror or one of its lower tier subcontractors prior to termination.

Certification: *(Check appropriate response and provide additional information if necessary.)*

Offeror certifies that all individuals who will be assigned to work under this subcontract are in compliance with the requirement of paragraphs (a) through (d) of this section.

Offeror states that one or more individuals who will be assigned to work under this subcontract are not in compliance with the requirement of paragraphs (a) through (d) of this section. The name of such individual(s) is/are:

N/A 17. **SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING CERTIFICATION**
(Applies to all subcontracts expected to exceed \$550,000 and construction subcontracts expected to exceed \$1,000,000. If resultant subcontract is not expected to exceed the stated thresholds, check N/A box located left of the title.)

The Offeror certifies that the following conditions exist in determining whether the Offeror is required to submit a plan for subcontracting with small business and small disadvantaged business concerns. (Check all that apply.)

A. The Offeror is exempt from the requirements of a subcontracting plan for the following reason(s):

(i) The Offeror is a small business as defined in 15 U.S.C. 632, Small-business concern.

(ii) Subcontracting possibilities are not offered in this subcontract. (Further explanation is required including the specifics of the Scope/Statement Of Work.)

Explanation: _____

(iii) The subcontract, and all lower-tier subcontracts under it, will be performed entirely outside of the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico and is, therefore, not covered.

(iv) The subcontract is for personal services and is, therefore, not covered. (Further explanation is required including the specific reasons this statement is true.)

Explanation: _____

B. The Offeror is required to submit and obtain approval of a Small Business and Small Disadvantaged Business Subcontracting Plan before subcontract award. See Form 3194.00.0993, *Small Business Subcontracting Plan*, at http://www.lanl.gov/orgs/sup/procurement/php/supplier_forms.php.

Offeror acknowledges that it will include the *Utilization of Small Business Concerns and Small Disadvantaged Business Concerns* clause (i.e., FAR 52.219-8) in all subcontracts that offer subcontracting opportunities, and that the Offeror will require all subcontractors, except small business concerns, that receive subcontracts in excess of \$550,000 (\$1,000,000 for construction subcontracts) to adopt a plan similar to the plan required by the *Small Business Subcontracting Plan* clause (i.e., FAR 52.219-9) of this subcontract.

The Offeror understands that:

- 1) No subcontract will be awarded unless and until an acceptable subcontracting plan, if required, is negotiated with LANS and the approved plan is incorporated as a material part of the subcontract;
- 2) As determined by LANS, an acceptable subcontracting plan must provide the maximum practicable opportunity for small business and small disadvantaged business concerns to participate in the performance of the subcontract;
- 3) If an acceptable subcontracting plan is not negotiated with LANS within the time limits prescribe, the Offeror shall be ineligible for an award. LANS shall notify the Offeror in writing of the reasons for

determining a subcontracting plan to be unacceptable and allow adequate time for the Offeror to modify its plan;

- 4) Commercial subcontracting plans on a company-wide basis must have a current Federal agency approval and are acceptable for commercial products only; and
- 5) Master subcontracting plans on a division- or plant-wide basis must contain individual subcontracting goals for the particular subcontract.

18. SIGNATURE / CERTIFICATION *(Applies to all solicitations)*

By signing below, the Offeror certifies that these representations and certifications are accurate, current, and complete. The Offeror further certifies that it will immediately notify LANS (i.e., the Subcontract Administrator assigned to this solicitation/resultant subcontract) of any changes to these representations and certifications which may occur from the date of this certification through the term of any resultant subcontract that may be awarded to the Offeror.

David W. Richardson

Signature of the Officer or Employee responsible for this submittal

David W. Richardson, Associate Vice President for Research, Director of Sponsored Programs
Typed Name and Title of the Officer or Employee

10/20/11
Date