

THIS NOTICE IS NOT A FORMAL SOLICITATION. THIS NOTICE IS NOT CONSIDERED A REQUEST FOR PROPOSAL (RFP). NO SOLICITATION DOCUMENT IS AVAILABLE AND TELEPHONE REQUESTS WILL NOT BE HONORED.

The National Institute of Standards and Technology (NIST) Acquisition Management Division, on behalf of the Information Technology Laboratory (ITL), intends to negotiate directly with ANSYS, Inc., on a sole source basis under the authority of FAR 13.106-1(b)(1)(i) to purchase new ANSYS High-Performance Computing licenses and renew the maintenance on existing Mechanical licenses.

This software license is required to perform finite-element analyses that are necessary for the continuation of projects in group 733.06.

The North American Industry Classification System (NAICS) Code for this requirement is 511210 with the Size Standard of \$35.5 million.

NIST requires the following ANSYS products/services:

- a. One (1) ANSYS Mechanical license renewal is required for analysis of finite element models, included pre- and post-processing capabilities. Full compatibility with the large number of existing ANSYS input and output files is required.
- b. Four (4) ANSYS High-Performance Computing (HPC) licenses are required for high-performance computation of the large-scale structural systems (e.g., multi-story steel building) subjected to fire and structural loads and for analyzing the complex multi-physics material behavior of construction materials (e.g., reinforced concrete). ANSYS HPC licenses should facilitate multiple parallel processing simulations when needed.

The desired items must be an ANSYS product which should be fully compatible with ANSYS Mechanical license and existing ANSYS input files, and should be fully functional in existing quad-core (Intel Xeon E5-2609) workstations in group 733.06.

ANSYS, Inc. is the sole provider of the required products, and does not have any authorized resellers through which the Federal government can procure these products.

Any prospective contractor must be registered in the System for Award Management (SAM) in order to be eligible for award. Information concerning SAM registered requirements may be viewed via the Internet at www.sam.gov.

Interested parties that believe they could satisfy the requirements listed above for NIST may clearly and unambiguously identify their capability to do so in writing on or before the response date for this notice. This notice of intent is not a solicitation. Any questions regarding this notice must be submitted in writing via email to Sajurnia Harris at Sajurnia.harris@nist.gov. All responses to this notice of intent must be submitted so that they are received at keith.bubar@nist.gov no later than **June 21, 2016 at 8:00 AM Eastern Time**.

APPLICABLE PROVISIONS AND CLAUSES

The following provisions and clauses are applicable to the subject solicitation.

FAR Provisions and Clauses:

The following provisions and clauses apply to this acquisition and are hereby incorporated by reference. All FAR clauses may be viewed at http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/52_000.htm.

52.212-1 INSTRUCTIONS TO OFFERORS- COMMERCIAL ITEMS

52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS- COMMERCIAL ITEMS

52.212-4 CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS

52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS

52.219-6, Notice of Total Small Business Set-Aside

52.219-28, Post Award Small Business Program Rerepresentation

52.222-3, Convict Labor

52.222-19, Child Labor--Cooperation with Authorities and Remedies

52.222-21, Prohibition of Segregated Facilities

52.222-26, Equal Opportunity

52.222-36, Affirmative Action for Workers with Disabilities

52.222-50, Combatting trafficking in persons

52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving

52.225-13, Restrictions on Certain Foreign Purchases

52.232-33, Payment by Electronic Funds Transfer-System for Award Management

CAR Provisions and Clauses:

Department of Commerce Acquisition Regulation (CAR) clauses.

1352.201-70 CONTRACTING OFFICER's AUTHORITY (APR 2010)

The Contracting Officer is the only person authorized to make or approve any changes in any of the requirements of this contract, and, notwithstanding any provisions contained elsewhere in this contract, the said authority remains solely in the Contracting Officer. In the event the contractor makes any changes at the direction of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract terms and conditions, including price.

(End of clause)

1352.209-73 COMPLIANCE WITH THE LAWS (APR 2010)

The contractor shall comply with all applicable laws, rules and regulations which deal with or relate to performance in accord with the terms of the contract.

(End of clause)

1352.209-74 ORGANIZATIONAL CONFLICT OF INTEREST (APR 2010)

(a) Purpose. The purpose of this clause is to ensure that the contractor and its subcontractors:

(1) Are not biased because of their financial, contractual, organizational, or other interests which relate to the work under this contract, and

(2) Do not obtain any unfair competitive advantage over other parties by virtue of their performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the contractor, its parents, affiliates, divisions and subsidiaries, and successors in interest (hereinafter collectively referred to as “contractor”) in the activities covered by this clause as a prime contractor, subcontractor, co-sponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(c) Warrant and Disclosure. The warrant and disclosure requirements of this paragraph apply with full force to both the contractor and all subcontractors. The contractor warrants that, to the best of the contractor’s knowledge and belief, there are no relevant facts or circumstances which would give rise to an organizational conflict of interest, as defined in FAR Subpart 9.5, and that the contractor has disclosed all relevant information regarding any actual or potential conflict. The contractor agrees it shall make an immediate and full disclosure, in writing, to the Contracting Officer of any potential or actual organizational conflict of interest or the existence of any facts that may cause a reasonably prudent person to question the contractor’s impartiality because of the appearance or existence of bias or an unfair competitive advantage. Such disclosure shall include a description of the actions the contractor has taken or proposes to take in order to avoid, neutralize, or mitigate any resulting conflict of interest.

(d) Remedies. The Contracting Officer may terminate this contract for convenience, in whole or in part, if the Contracting Officer deems such termination necessary to avoid, neutralize or mitigate an actual or apparent organizational conflict of interest. If the contractor fails to disclose facts pertaining to the existence of a potential or actual organizational conflict of interest or misrepresents relevant information to the Contracting Officer, the Government may terminate the contract for default, suspend or debar the contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.

(e) Subcontracts. The contractor shall include a clause substantially similar to this clause, including paragraphs (f) and (g), in any subcontract or consultant agreement at any tier expected to exceed the simplified acquisition threshold. The terms “contract,” “contractor,” and “Contracting Officer” shall be appropriately modified to preserve the Government’s rights.

(f) Prime Contractor Responsibilities. The contractor shall obtain from its subcontractors or consultants the disclosure required in FAR Part 9.507-1, and shall determine in writing whether the interests disclosed present an actual, or significant potential for, an organizational conflict of interest. The contractor shall identify and avoid, neutralize, or mitigate any subcontractor organizational conflict prior to award of the contract to the satisfaction of the Contracting Officer. If the subcontractor’s organizational conflict cannot be avoided,

neutralized, or mitigated, the contractor must obtain the written approval of the Contracting Officer prior to entering into the subcontract. If the contractor becomes aware of a subcontractor's potential or actual organizational conflict of interest after contract award, the contractor agrees that the Contractor may be required to eliminate the subcontractor from its team, at the contractor's own risk.

(g) Waiver. The parties recognize that this clause has potential effects which will survive the performance of this contract and that it is impossible to foresee each circumstance to which it might be applied in the future. Accordingly, the contractor may at any time seek a waiver from the Head of the Contracting Activity by submitting such waiver request to the Contracting Officer, including a full written description of the requested waiver and the reasons in support thereof.

(End of clause)

1352.233-70 AGENCY PROTESTS (APR 2010)

(a) An agency protest may be filed with either: (1) the contracting officer, or (2) at a level above the contracting officer, with the appropriate agency Protest Decision Authority. *See* 64 Fed. Reg. 16,651 (April 6, 1999)

(b) Agency protests filed with the Contracting Officer shall be sent to the following address:

NIST/ACQUISITION MANAGEMENT DIVISION
ATTN: TODD HILL, CONTRACTING OFFICER
100 Bureau Drive, MS 1640
Gaithersburg, MD 20899

(c) Agency protests filed with the agency Protest Decision Authority shall be sent to the following address:

NIST/ACQUISITION MANAGEMENT DIVISION
ATTN: HEAD OF THE CONTRACTING OFFICE (HCO)
100 Bureau Drive, MS 1640
Gaithersburg, MD 20899

(d) A complete copy of all agency protests, including all attachments, shall be served upon the Contract Law Division of the Office of the General Counsel within one day of filing a protest with either the Contracting Officer or the Protest Decision Authority.

(e) Service upon the Contract Law Division shall be made as follows:

U.S. Department of Commerce
Office of the General Counsel
Chief, Contract Law Division
Room 5893
Herbert C. Hoover Building
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230.
FAX: (202) 482-5858

(End of clause)

1352.233-71 GAO AND COURT OF FEDERAL CLAIMS PROTESTS (APR 2010)

(a) A protest may be filed with either the Government Accountability Office (GAO) or the Court of Federal Claims unless an agency protest has been filed.

(b) A complete copy of all GAO or Court of Federal Claims protests, including all attachments, shall be served upon (i) the Contracting Officer, and (ii) the Contract Law Division of the Office of the General Counsel, within one day of filing a protest with either GAO or the Court of Federal Claims.

(c) Service upon the Contract Law Division shall be made as follows:

U.S. Department of Commerce
Office of the General Counsel
Chief, Contract Law Division
Room 5893
Herbert C. Hoover Building
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230.
FAX: (202) 482-5858

(End of clause)

GOVERNMENT REVIEW, COMMENT, ACCEPTANCE AND APPROVAL:

(a) Documentation, including drawings and other engineering products and reports, required by the contract to be submitted for review, comment, acceptance or approval will be acted upon by the Government within 30 calendar days after receipt by the Government, unless another period of time is specified.

(b) Review, comment, acceptance or approval by the Government as required under this contract and applicable specifications shall not relieve the contractor of its obligation to comply with the specifications and with all other requirements of the contract, nor shall it impose upon the Government any liability it would not have had in the absence of such review, comment and acceptance or approval.

NIST Provisions and Clauses:

NIST LOCAL 04 BILLING INSTRUCTIONS

(a) NIST prefers electronic Invoice/Voucher submissions and they should be emailed to INVOICE@NIST.GOV.

(b) Each Invoice or Voucher submitted shall include the following:

- (1) Contract Number.
- (2) Contractor Name and Address.
- (3) Date of Invoice.
- (4) Invoice Number.
- (5) Amount of Invoice and Cumulative Amount Invoiced to-date.
- (6) Contract Line Item Number (CLIN).

- (7) Description, Quantity, Unit of Measure, Unit Price, and Extended Price of Supplies/Services Delivered.
- (8) Prompt Payment Discount Terms, if Offered.
- (9) Any other information or documentation required by the contract.
- (c) In the event electronic submissions are not used, The Contractor shall submit an original invoice or voucher in accordance with the payment provisions of this contract to:
NIST: Accounts Payable Office 100 Bureau Drive, Mail Stop 1621 Gaithersburg, MD 20899-1621

Additional Provisions and Clauses:

52.203-98, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements—Representation (DEVIATION 2015-02)

**PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL
CONFIDENTIALITY AGREEMENTS—REPRESENTATION (FEB 2015)**

(a) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Resolution Appropriations Act, 2015 (Pub. L. 113-235), Government agencies are not permitted to use funds appropriated (or otherwise made available) under that or any other Act for contracts with an entity that requires employees or subcontractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The prohibition in paragraph (a) of this provision does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(c) *Representation.* By submission of its offer, the Offeror represents that it does not require employees or subcontractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(End of provision)

52.203-99, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements (DEVIATION 2015-02)

PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS (FEB 2015)

- (a) The Contractor shall not require employees or subcontractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
- (b) The contractor shall notify employees that the prohibitions and restrictions of any internal confidentiality agreements covered by this clause are no longer in effect.
- (c) The prohibition in paragraph (a) of this clause does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
- (d)(1) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Resolution Appropriations Act, 2015 (Pub. L. 113-235), use of funds appropriated (or otherwise made available) under that or any other Act may be prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.
- (2) The Government may seek any available remedies in the event the Contractor fails to comply with the provisions of this clause.

(End of clause)

Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction Under Any Federal Law (Class Deviation) (March 2015)

- (1) In accordance with Sections 744 and 745 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), none of the funds made available by the Consolidated and Further Continuing Appropriations Act, 2015 funding may be used to enter into a contract with any corporation that-
 - (a) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where an awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government, or

(b) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

(2) The Offeror represents that, as of the date of this offer -

(a) It is ☐ is not ☐ a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(b) It is ☐ is not ☐ a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

(End of provision)

Assurance by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction Under Any Federal Law (Class Deviation) (March 2015)

(1) In accordance with Sections 744 and 745 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), none of the funds made available by Consolidated and Further Continuing Appropriations Act, 2015 and subsequent appropriations acts may be used to enter into a contract with any corporation that -

(a) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where an awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government, or

(b) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

(2) *By accepting this award or order, in writing or by performance*, the offeror/contractor assures that -

(a) The offeror/contractor is not a corporation convicted of a felony criminal violation under a Federal law within the preceding 24 months.

- (b) The offeror/contractor is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

(End of Clause)

**CERTIFICATION BY OFFERORS REGARDING FEDERAL INCOME TAX FILING AND
FEDERAL INCOME TAX VIOLATIONS. (Class Deviation) (March 2015)**

(a) In accordance with Section 523 of Division B, Consolidated and Further Continuing Appropriations Act, 2015, (Pub. L. 113-235) none of the funds made available by the Act may be used to enter into a contract in an amount greater than \$5,000,000 unless the prospective contractor certifies in writing to the U.S. Consolidated and Further Continuing that, to the best of its knowledge and belief, the contractor has filed all Federal tax returns required during the three years preceding the certification, has not been convicted of a criminal offense under the Internal Revenue Code of 1986, and has not, more than 90 days prior to certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

(b) The offeror's proposal shall include a signed written certification as follows –
To the best of my knowledge and belief, ---(name of offeror)--- has filed the Federal tax returns required during the three years preceding this certification, has not been convicted of a criminal offense under the Internal Revenue Code of 1986, and has not, more than 90 days prior to certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

Firm _____

Signature _____

Name _____

Title _____

Date of execution _____

(End of Provision)