

The Regents of the University of California

**COMMITTEE ON OVERSIGHT OF THE
DEPARTMENT OF ENERGY LABORATORIES**

January 15, 2003

The Committee on Oversight of the Department of Energy Laboratories met on the above date at UCSF–Laurel Heights, San Francisco.

Members present: Regents Atkinson, Blum, Davies, Marcus, Montoya, Moores, Pattiz, and Preuss; Advisory members Bodine and Binion

In attendance: Regents Bustamante, Hopkinson, Johnson, Kozberg, Lansing, Lee, Ligot-Gordon, Parsky, Sainick, and Sayles, Regents-designate Murray and Seigler, Faculty Representative Pitts, Secretary Trivette, General Counsel Holst, Treasurer Russ, Provost King, Senior Vice Presidents Darling and Mullinix, Vice Presidents Broome and Gomes, Assistant Vice President Obley representing Vice President Hershman, Chancellors Berdahl, Bishop, Carnesale, Cicerone, Córdova, Dynes, Greenwood, Vanderhoef, and Yang, Laboratory Directors Anastasio and Shank, Interim Laboratory Director Nanos, Auditor Reed, and Recording Secretary Bryan

The meeting convened at 11:40 a.m. with Committee Chair Preuss presiding.

1. APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING

Upon motion duly made and seconded, the minutes of the meeting of November 13, 2002 were approved.

2. AUTHORIZATION TO APPROVE AND EXECUTE MODIFICATIONS TO THE DEPARTMENT OF ENERGY CONTRACTS FOR LOS ALAMOS NATIONAL LABORATORY AND LAWRENCE LIVERMORE NATIONAL LABORATORY TO AMEND CLAUSES

The President recommended that he be authorized to approve and execute a modification to the provisions of contracts W-7405-ENG-36 and W-7405-ENG-48 in order to incorporate revisions to the clauses indicated.

It was recalled that the Department of Energy contracts with the University for management of the Los Alamos National Laboratory and the Lawrence Livermore National Laboratory were amended on January 18, 2001, extending the term of the contracts to September 30, 2005. From time to time changes are necessary to reflect the ongoing agreement between the University and the Department of Energy. The clause changes summarized below reflect the most accurate and up-to-date language agreed to between the parties.

H.034 PERFORMANCE DIRECTION

This new clause establishes lines of authority among the elements of the National Nuclear Security Administration (NNSA) and the contractor and more clearly defines the responsibilities of the Contracting Officer's Representative (COR).

I.049 DEAR 952.204-2 SECURITY (MAY 2002)(DEVIATION)

This clause has been updated to add language related to foreign ownership, control, or influence over contractor, as the separate clause has been deleted from the DEAR.

I.051 DEAR 952.204-74 FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR (APR 1984) (DEVIATION)

This clause has been deleted, and relevant language added to the updated Security clause.

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

3. **APPROVAL FOR THE PRESIDENT TO EXECUTE NON-SUBSTANTIVE ADMINISTRATIVE AMENDMENTS TO THE DEPARTMENT OF ENERGY CONTRACTS FOR LAWRENCE BERKELEY NATIONAL LABORATORY, LAWRENCE LIVERMORE NATIONAL LABORATORY, AND LOS ALAMOS NATIONAL LABORATORY**

This item was withdrawn by the President.

4. **UPDATE ON THE LOS ALAMOS NATIONAL LABORATORY**

Committee Chair Preuss stated that the University's relationship with the Department of Energy laboratories is a very cherished one. Many Regents consider it an important service to the country more than a benefit to the University. He believed the Regents should consider how to maintain the best possible relationship between the laboratories, the University, and the country with regard to this asset.

President Atkinson made the following statement:

"As you know, the University's management of the national laboratories has come under question in recent weeks after a series of developments at the Los Alamos National Laboratory. The Secretary of Energy, Spencer Abraham, has been clear...the laboratory's current problems have called into question the University's ability to manage Los Alamos. I will be equally clear. We will

address Secretary Abraham's concerns and restore the confidence we have enjoyed for much of our 60-year association with the Los Alamos laboratory.

Let me put this matter into context. Amid growing concerns on my part about irregularities at the laboratory, I ordered a senior management team led by Senior Vice President Bruce Darling to visit Los Alamos to review the situation. The team visited on November 25 and later provided me with a series of recommendations. On the day that the team visited Los Alamos, the leadership of the laboratory terminated two Los Alamos investigators, former police officers Glenn Walp and Steven Doran, who had made charges of fraud and abuse at the laboratory. The laboratory management terminated these individuals without informing me or any member of the visiting review team.

Two weeks later, on December 12, John Browne, then Director of the laboratory, and I met with Secretary Abraham, Deputy Secretary McSlarrow, and Acting National Nuclear Security Administrator Brooks in Santa Fe. At the meeting, John Browne reviewed the situation at Los Alamos. It became clear to me during the course of that meeting that the problems were more widespread than originally reported and were not being adequately addressed. I requested the review team to make a second visit to the laboratory on December 18 and, among other matters, look into the allegations made by the two terminated investigators and the circumstances of their dismissal. As a result of that visit and the team's report, I determined that only sweeping management changes, unprecedented in scope, would begin to restore confidence in the laboratory's business practices. Director John Browne and Principal Deputy Director Joseph Salgado tendered their resignations on December 23. I then appointed retired Admiral Pete Nanos as Interim Director and went to Los Alamos on January 6 to introduce him to the laboratory community at an all-hands meeting.

You will meet Admiral Nanos in a minute. Let me say that he is a graduate of the U.S. Naval Academy. He chose to go on for a Ph.D. in physics at Princeton University and worked with someone whom I highly respect. He has had a very distinguished scientific career, but he also, in his Naval experience, has been judged to be a real agent of change. I think we were very lucky that he was available to take on this activity.

Shortly thereafter, I appointed Senior Vice President Bruce Darling as the Interim Vice President for Laboratory Management. In addition to serving in his new capacity, he will continue his regular duties as Senior Vice President for University Affairs.

Finally, let me resonate with our Chairman and say that we have taken these sweeping and dramatic actions because of the pride we at the University of California feel for our long and productive association with Los Alamos. The scientific and technical work at the laboratory continues to be of the highest

quality. By making these changes, we are saying that the business and administrative practices of the laboratory need to be held to the same high standards. I have complete confidence in Bruce Darling and Pete Nanos to make the necessary changes to the management of the Los Alamos laboratory.”

Interim Vice President Darling provided an update on the developments at Los Alamos and the steps that the University is taking in that regard. He recalled that in August 2002, the University took initial steps to investigate the purchase card program at Los Alamos by ordering an independent review headed by a former Department of Energy and Department of Treasury Inspector General, with the assistance of the University’s external auditor, PricewaterhouseCoopers. Mr. Darling stated that his involvement began when on Friday, November 22 President Atkinson asked him to lead the team of University officials to review the laboratory’s business practices. The special review team was composed of Ms. Anne Broome—Vice President for Financial Management, Mr. Robert Van Ness—Assistant Vice President for Laboratory Administration, and Mr. Ron Cochran—Executive Officer for the Lawrence Livermore National Laboratory. The team interviewed Los Alamos laboratory managers about the purchase card program, the laboratory procurement program, the property management program, and all related business practices. It also interviewed Mr. John Layton, the former DOE Inspector General who was chairing the external review of the purchase card irregularities. On December 6, the special review team recommended to President Atkinson nine actions to improve the laboratory’s business practices.

Mr. Darling noted that the Los Alamos budget in fiscal year 2002 was \$1.7 billion. Its procurement obligations that year totaled \$1.2 billion, of which the purchase card program amounted to \$36 million. The laboratory’s cumulative property asset value in fiscal year 2002 was \$943 million. He reported that the team continues to examine the issues, and he emphasized that the amounts of money that may have been misappropriated, while not large, are unacceptable. They demonstrate inadequate controls by the laboratory and improper business practices which require strong management action. The team urged the managers of the directors of the Livermore and Berkeley laboratories also to examine their laboratory practices in nine areas listed in the December 6 recommendations.

Mr. Darling recalled that the review team was at Los Alamos when it learned after the fact that the laboratory had terminated two security division employees who were investigating theft and misuse of government property and funds at the laboratory. In the December 6 communication, the team urged the University to make its own assessment, without interfering with the Inspector General’s review, of the allegations that a small number of employees had misused purchase cards or violated purchasing procedures. Copies of the recommendations have been provided to the DOE Secretary, the National Nuclear Security Administrator, and to the DOE Inspector General.

Mr. Darling reported that when President Atkinson returned from his trip to New Mexico, he asked him to head another special review team to examine the termination of the two laboratory investigators. The second team included Mr. Van Ness and Mr. Cochran, plus Mr. John Lundberg, the University's Deputy General Counsel, and Mr. Joe Mullinix, the University's Senior Vice President for Business and Finance. Between December 18 and December 20, the team interviewed over a dozen laboratory managers. The second team is scheduled to interview Mr. Walp and Mr. Doran to understand their perspectives on the misuse of funds and their terminations. It has hired a former U.S. Attorney to interview officials from the U.S. Attorney's and the F.B.I.'s officers in Albuquerque about the laboratory's interaction with those offices during the course of the investigations in an effort to establish whether there is truth to the allegations of obstruction and cover up by laboratory management. The team briefed President Atkinson, Chairman Moores, and the Chairs of the Regents' DOE Laboratory Oversight, Finance, and Audit Committees about its findings. An RFP was issued by the University soliciting firms to review the laboratory's business processes, controls, and organization of the business and finance functions. It was decided that in the interim the laboratory's financial and business operations would report to the University's Vice President for Financial Management, that its auditor would report to the University Auditor, and that the laboratory's communications and federal relations offices would report to the University's Assistant Vice Presidents for Communications and Federal Government Relations.

Mr. Darling continued that in the first week of January he, President Atkinson, and Interim Director Nanos met with the Los Alamos laboratory's executive team, the scientific and administrative division leaders, over 700 employees, and the local media to explain how the University was addressing the issues under review.

Mr. Darling concluded his remarks by reporting that Mr. Bob Kuckuck, who created and led the University's Laboratory Administration Office, is a former Deputy Director at the Livermore laboratory, and was second in command at the National Nuclear Security Administration, would serve as his senior advisor. He noted that the University has been communicating with the National Nuclear Security Administration Administrator, the Department of Energy leadership, the New Mexico Senatorial delegation, and members of Congress in order to be forthright about what the University is doing. Congressional hearings are expected to be held in February or March concerning the University's capacity to manage the Los Alamos laboratory. The Secretary of Energy has asked Deputy Secretary McSlarrow and N.N.S.A. Administrator Brooks to evaluate the University's capabilities and performance with respect to the laboratory and to provide him with a recommendation by April 30. Mr. Darling stressed that the University is bringing to bear its full resources on resolving these matters and is pursuing five tracks. First, it is still assessing the situation at Los Alamos in order to put in place the organization, the systems, and the people necessary to achieve a high standard of business operations. Second, it is assessing the situation at Lawrence Livermore and Lawrence Berkeley laboratories with the intention of taking any necessary corrective actions should they be found to be needed. Third, it is assessing the University's current governance and oversight of

the laboratories and will recommend changes. Fourth, the issue of the termination of the two laboratory investigators is being pursued. The team will continue to disclose its findings and actions. Finally, he reported that the University has put together an oversight board to help Deputy Associate Director Nanos in implementing the necessary changes at the laboratory.

Mr. Darling then introduced Mr. Nanos, recalling that in August 2002 he had been appointed Deputy Associate Director for Threat Reduction at the Los Alamos National Laboratory. Mr. Nanos stressed the importance of maintaining the high quality of the science at the laboratory. He then addressed alignment in oversight, the issues of internal and external communications, and administrative and business processes.

Mr. Nanos reported that changes at the laboratory were taking place very rapidly. Vice President Broome is examining the financial issues. University Auditor Reed is dealing with reestablishing the independence and credibility of the audit functions. Mr. Jim Lopez, formerly of the Livermore laboratory, has been appointed Acting Deputy Associate Director for Administration. Mr. Steve Hunt, the Livermore laboratory's Associate Director for Laboratory Services, is leading a red team to help with the examination of processes. Mr. Nanos emphasized that the Los Alamos administration intends to draw on the full expertise and strengths of the University to help solve its problems.

Mr. Nanos noted that the laboratory's science has not been called in question, only its administrative and business processes. The dollar values involved are not large. The issue is one of restoring trust and confidence in the laboratory's management controls. He believed the business processes must be unraveled so as to assess performance, make corrections, and rebuild from the bottom up. In order to do that it will be necessary to have solid communication. He reported that he has informed his colleagues that everything he says will be on the record and that reports from his all-hands meetings and public pronouncements will be freely available to the press and others. He stated that he has met with senior laboratory leaders and is holding sessions with every first-line supervisor to explain what will be required. He hopes to impress on the people at the laboratory that the administration intends to make changes but will not shift blame to them. He believed that an environment at the laboratory had developed that requires first-line supervisors to do a great deal with insufficient resources. There are many who have found that over the years the group leader's job has had a large administrative burden placed on it, making it difficult to maintain the quality of the science, to train, select, and assign people, to do the necessary career development, to handle all the administrative tasks, and in some cases to manage very complex technical programs. He reported that he had informed these supervisors that in the short term, until the fundamental problems can be brought to light and recommendations made for change, they must provide an additional level of execution. With that, the interior communications at the laboratory become very important. He reported that he has informed his division heads and associate directors that they must personally examine the work of the laboratory at the first line of supervision and invest in support for their managers to be able to execute the laboratory's programs with

excellence. He stressed that the support of employees at that level was extremely important.

Mr. Nanos commented that once the short-term problem has been addressed, the question of solving the problem over the long term must be tackled. He reported that he had ordered a brief study to produce for the senior executive team an analysis of the first-line supervisor jobs that will help to define a common set of business processes and ways of doing business across the laboratory that will bring it into the 21st century. The examination is intended to disclose to senior-level management whether the job as it is done is understood. Then a set of group leaders who are revered by their peers will design a consensus set of business processes to be adopted across the laboratory. These practices will be implemented in the laboratory's enterprise resource programs, the new business systems at the laboratory. Understanding how business is done at the core and building that integrity from the first line of management to the top is fundamental. He pointed out that every time a business is restructured, the experience is painful for the organization. In this situation, great care must be taken to preserve the outstanding level of science that is conducted at the laboratory.

Mr. Nanos emphasized that the examination and changes are being done in an open atmosphere. He believed that the feedback that he was receiving from the workers, the group leaders, and the laboratory's technical staff indicated that they are pleased to be able to take on the challenge. He noted, however, that the situation is fragile and that in his leadership role he intended to take seriously the importance of nurturing the confidence of the workforce. It is possible that the rebuilding may disclose unanticipated problems. He reiterated that the most important things for the nation were to have its trust and confidence in the laboratory rebuilt, starting with the first-line supervisors, and to build an excellent business and technical structure from that point without losing sight of the laboratory's primary responsibilities.

Regent Blum observed that the reality was that the University has a scandal on its hands. Its oversight of the DOE laboratories is in severe question. He believed that the first order of the day was to prove not only from what can be obtained internally but through third-party verification that the University has discovered the full scope of the problem. The powers in Washington, some of whom may be looking for an excuse to terminate the University's management contract, must be convinced that a thorough investigation has taken place. Mr. Nanos agreed about the importance of the issue, that it is not the size of any one particular transgression but the question of whether there is confidence in the overall management controls that indicate that all of the problems will be identified and dealt with in a forthright, expeditious manner. He reiterated that the University has begun analyses of overall security, all business practices, and the termination of employees. There must be transparency and a quality of business information and data that will allow the laboratory to dispel the fears of the American public that it is not being managed well and that all information relevant to the quality of the University's management is not being disclosed. He believed that the only way to do that was to "drain the swamp," no matter how long it takes, in order to get all the information on the table and move forward from that point. It was his

opinion that in the final analysis, the University will not be “out of the woods” until it can demonstrate that the processes and controls are sufficiently well founded, can be audited, and are transparent enough to restore confidence in the laboratory’s operations. He emphasized that his goal was to do the job to completion. The work must start at the level where the science at the laboratory meets the business at the laboratory. Interim Vice President Darling added that the University has brought in outside entities to make clear that it is willing to have its management of the laboratory carefully scrutinized. The University’s external auditor, PricewaterhouseCoopers, has put together a five-member team of forensic auditors separate from its regular laboratory audit team to look specifically for problems. Regent Blum believed that, for an organization that has revenues of over \$1 billion a year and is in a situation where answers need to be found quickly, a team of five auditors is inadequate. Mr. Darling explained that the five-person group was the group constituted in August when the only thing being reviewed was the purchasing card program. The purpose of bringing in additional outside help is to expand the investigation.

Regent Hopkinson stated that, while it is important to gather information about what went wrong, it is important also to look forward. She asked how the Regents could become more involved in laboratory oversight. Vice President Darling responded that the oversight board that is being constituted will include as members Regents Preuss, Blum, and Parsky. A top-to-bottom review will be undertaken on the University’s governance and oversight of the laboratories. He reported that discussions have begun with Chairman Moores, Regent Preuss, and Regent Davies outlining why this is needed. He anticipated that changes to the Committee on Oversight may be necessary to supplement the Regents’ membership with people who have national security, scientific, and other skills. He anticipated examining the roles of the President, Vice President for Laboratory Management, and the laboratory coordinating council that includes Provost King, Senior Vice President Mullinix, and the three DOE laboratory directors to examine not only what needs to be accomplished in science for the nation but also to make sure that issues are being brought up and addressed. Also, he advocated reexamining the President’s Council on the National Laboratories, strengthening its role, and appointing one of its members to the Regents’ oversight committee so that the Regents will have input from someone at the table who is monitoring closely the scientific, environmental health and safety, project management, and other issues at the laboratories.

Regent Pattiz approved of the initial steps that are being taken to get the situation under control. He emphasized the importance of transparency in the process. He asked what the University is doing to respond to press inquiries and reporting, citing, for example, a recent story that claimed that the University would not be involved in the competition if the management contract were to be put out to bid. He noted also that figures are being thrown around as to the amount of money misappropriated. He stressed the need for the University to speak with one voice. Mr. Darling responded that it was premature to release estimates as to the scope of the financial loss. He noted that the University’s position historically has been that it would not compete for a contract, but he emphasized that the question of whether the University would bid

for the contract is premature while the University is focusing on addressing the issues at hand and making changes. That question will be addressed by The Regents when and if it becomes necessary. He believed that it would be unwise for the nation to change managers at a time when the laboratories are being asked to take a leadership role in homeland security efforts. He emphasized that the University did not seek out the contract for business reasons but accepted the role of manager in response to a request from the federal government based on the University's unquestioned leadership in scientific development. Those who work at the laboratories believe that the University is crucial to their efforts in that it provides a vast resource from which to draw scientific information in the quest to meet the country's goals. He welcomed any guidance as to how the University can coordinate its release of information. Regent Pattiz emphasized the need to let the public know that everything that can be done is being done and that as soon as firm figures are available they will be released.

Regent Bustamante commented that the Los Alamos laboratory has been a major part of what the University does for the past 60 years and that the benefit to California and nation far outweighs a simple management contract. He was pleased that competent technical people had been brought in to deal with the situation. After being assured by Vice President Darling that the nation's secrets were safe at the Los Alamos laboratory, that the amount of money known to have been misappropriated was minimal relative to a \$1.7 billion budget, and that the people involved in the malfeasance had been fired, he advocated making those facts clear to the public. He was of the opinion that what is being called a scandal will turn out to be a minor loss, and he was unsettled by the extremes to which the case was being taken, such as suggesting that the University should lose its management contract. The DOE laboratories have invested hundreds of billions of dollars in the last 60 years to provide a tremendous number of benefits. He advocated demonstrating strongly that the University is in control of the situation and has the ability not only to manage the nation's secrets but also to provide the creativity that has made California's institutions what they are.

Chairman Moores agreed that it is very important for the University to get its message out. His sense was that the misappropriations will turn out to be relatively small, that they do not involve national security, and that there have been some vastly overblown statements in the media that the ongoing investigations will clarify. Interim Director Nanos reported that the initial unreconciled purchase card total reported in the press was \$3.7 million. In fact, that was the number of purchases that were not reconciled online. There were \$2.7 million that were reconciled manually and were not in the initial tally. He noted, however, that the fact that the amount was never more than about \$1 million and is decreasing as the investigation continues does not matter, because the \$3.7 million stated in the media is what people will remember. The real numbers must be gotten out early, and the weaknesses in the business systems are hampering that effort. That is why improvements must be made.

Regent Blum was concerned about the public's reaction to the statement that the University will not compete for the contract. He advised making it clear that the

University would like to continue its service to the nation in this regard and intends to fix the problem, and that a decision will be made by The Regents about competing for the contract when and if it becomes necessary. He advocated going on the record with the *San Francisco Chronicle*, which had published a statement to the contrary, that the University has no position against competing for the contract.

Regent Marcus noted that any audit group would find that a loss the size of the one indicated would be deemed not material. The University will spend probably \$30 million trying to fix a problem of at most a few million dollars. He believed that it is the perceived cover up and not the initial action that is causing public concern. Although the laboratory may be better off for examining and revising its business practices, the greatest effort should be made to contain that problem, put it into context, and then deal with the issue of the termination of the two investigative officers.

Regent Parsky believed that there was a confidence gap that needs to be addressed and that it would be a mistake to press those who have been on the job for a matter of days for answers on questions that need time to be answered. The information he was looking forward to getting from the administration was that an appropriate time frame within which answers may be provided would be determined, that enough resources were being applied to the problem, and that third-party confirmation of any findings would be provided so that the University can make a strong case for continuing to manage the laboratories.

The meeting adjourned at 12:55 p.m.

Attest:

Secretary