

The Regents of the University of California

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

September 18, 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, Bodine, Davies, Marcus, Montoya, Moores, Parsky, Preuss, and Siegler; Advisory members Ornellas and Blumenthal

In attendance: Regents Connerly, Hopkinson, Huerta, Johnson, Kozberg, Lozano, Murray, and Sayles, Regents-designate Anderson, Novack, and Pitts, Secretary Trivette, General Counsel Holst, Treasurer Russ, Provost King, Senior Vice Presidents Darling and Mullinix, Vice Presidents Doby, Drake, Gomes, Gurtner, and Hershman, Chancellors Berdahl, Bishop, Cicerone, Córdoba, Dynes, Greenwood, Tomlinson-Keasey, Vanderhoef, and Yang, Laboratory Directors Anastasio, Nanos, and Shank, and Recording Secretary Bryan

The meeting convened at 10:20 a.m. with Committee Chair Preuss presiding.

1. **APPROVAL OF MINUTES OF PREVIOUS MEETING**

Upon motion duly made and seconded, the minutes of the meeting of July 16, 2003 were approved.

2. **UPDATE ON THE NATIONAL LABORATORIES**

Senior Vice President Darling began his report by noting the passing of Edward Teller, the founder and former director of the Lawrence Livermore National Laboratory. Dr. Teller remained an integral part of the Livermore laboratory, which he visited twice weekly to meet with young scientists and engage in topics ranging from astrophysics to climate research and from terrorism to the nation's recent electrical blackout.

Mr. Darling reported that the University's role in managing the Department of Energy laboratories remains uncertain. The prevailing view in Washington is that competition will improve contractor performance and that the sentiment applies to the University of California as much as it does to other DOE contractors. The University is preparing information to support the upcoming decision by The Regents, should one be required, as to whether the University should compete for the management contract and on what terms. That decision will be influenced by a Request for Proposal (R.F.P.) being developed by the Department of Energy for release in fall 2004. In the meantime, the

University and the laboratories are continuing to improve laboratory business practices and to extend management improvements into all areas of the laboratories.

Mr. Darling reported that in Washington, the House Energy and Water Appropriations Committee had adopted language mandating that the Secretary of Energy open to competition all of the DOE management contracts that have not been open previously, including that of the Lawrence Livermore National Laboratory. This provision, which at present does not apply to the Lawrence Berkeley National Laboratory, is likely to apply to it in another five years when the current contract is completed. The bill would prohibit the Secretary from doing a number of things that Ambassador Brooks had indicated to the Regents he would like to do. It would prohibit the Secretary from adopting R.F.P. terms that would favor the University as the next contractor, from preserving the Los Alamos workforce and their pension benefits, and DOE from paying the University's costs for competing for the contract. These provisions apply to both the Livermore and Los Alamos laboratories. The Senate version of the bill contains no such provisions. It is expected that these differences will be resolved as early as October.

Mr. Darling reported that a Blue Ribbon Commission formed by Secretary Abraham is developing criteria to help him decide when and how to open to competition all DOE laboratory contracts. Mr. Darling recalled that in July he had provided written testimony to the commission, and in August Senior Vice President Mullinix and Laboratory Directors Anastasio and Nanos had testified before the committee. President Atkinson also has been interviewed about the issues. The University delivered the message that DOE should not develop a single approach for opening to competition all contracts in the DOE laboratory and plant complex but rather that it should develop R.F.P.s that are designed to support the specific mission that each laboratory accomplishes for the nation. The commission's report could influence how DOE chooses to conduct the competitions for the Los Alamos and Livermore laboratories.

Mr. Darling emphasized that the laboratories continue to focus on their science and national security missions and continue to improve their business practices. The Los Alamos laboratory completed a comprehensive inventory that has accounted for 99.7 percent of all property. An independent audit of the inventory is expected to validate the findings. He reported that nearly two-thirds of the corrective actions that emerged from previous reviews and the implementation of Director Nanos' business process improvement plan have been completed. Los Alamos selected a new bank, Wells Fargo, to provide institutional services and soon will begin implementing a cost system that will reduce the number of overhead rates at the laboratory in order to permit more efficient cost management. He reported that an Associate Director for Laboratory Services has been named. It is a key position that will provide a wide array of critical business and plant functions as well as oversee safeguards and security. This follows a major reorganization of safeguards and security as well as other actions to strengthen the laboratory's security practices, including new policies

and procedures governing the use of laboratory keys and access cards. Mr. Darling noted that recently the Berkeley laboratory had completed an internal investigation into the improper use of \$3 million that violated laboratory and federal policy. The laboratory acted decisively to recover the funds, with interest, and return them to the government. The employee involved was put on leave during the investigation and subsequently left the laboratory. It is hoped that the Lawrence Berkeley laboratory's five-year contract extension can be submitted to The Regents for approval in November.

Mr. Darling commented on the issue of using polygraphs in screening laboratory employees. He reported that Deputy Secretary McSlarrow had testified before the Senate Energy Committee that he intended to recommend that the Secretary reduce the polygraphs that the laboratory had been using from 20,000 to 4,500 and that polygraphs not be used as the sole basis for personnel actions at the laboratory. His recommendation relied heavily on a report from the National Research Council that found fault with the polygraphs in certain instances.

Mr. Darling noted that the process for selecting a Vice President for Laboratory Management in the Office of the President is under way.

Regent Murray asked when the Regents would need to decide about responding to any decision requiring the contract for Los Alamos laboratory to be put out to bid. Senior Vice President Darling reported that the Department of Energy has begun to assemble outside advisors to help determine how to prepare for a bidding competition. The University administration and faculty will need to have undertaken discussions with the Regents about how they wish to proceed so that, if the R.F.P. is sent out in fall 2004 as expected, the University will be prepared.

Regent Pattiz, noting that the Conference Committee in Washington will determine the outcome, asked whether the House version or the Senate version of the bill addressing the laboratory contracts is likely to be favored. Mr. Darling was uncertain which version would prevail. Senator Domeneci has indicated that he was in favor of a competition. It is hoped that Senator Feinstein and other members of the California delegation will lend their support to the University. Mr. Darling urged the Regents to persuade their contacts in Washington to contribute to this effort and offered to distribute a list of the Conference Committee members.

Committee Chair Preuss cautioned that the University should avoid the possibility of being excluded from bidding before it has a chance to determine what direction it should take. Mr. Darling believed that DOE was sensitive to the issue and intends to conduct the process in a way that meets the requirements of the law in relation to the Conference Committee's decisions but that does not force the University out of the competition.

Regent Murray observed that laboratory issues can be very contentious. He suggested providing the Regents with the perspectives of various groups on what the University's relationship should be to the laboratories. Mr. Darling indicated that the Academic Senate will be intensifying its interaction in order to have wide-ranging discussions of that issue.

Regent Hopkinson asked for comment about the level of morale among laboratory personnel. Director Anastasio reported that at Livermore, although there has been no dramatic effect on morale nor have recruiting and retention been damaged, the mood is cautious among top people across all disciplines. There was an increase in retirements during the summer, driven in part by the issues surrounding the laboratories but mainly by demographics, and there may be a surge in retirements in September 2005 when the current contract runs out. He believed that the laboratory had hired people of unusually high quality in the past few years. He noted, however, that their decisions to accept positions may have been related to the bad economy. The age demographics of the laboratory are such that in the next five years it is expected that the laboratory will experience a workforce turnover of 20 percent. The next generation will need to be recruited during a period of continued uncertainty. If the economy improves at the same time that contract decisions are being made, it will become more difficult to attract the most distinguished employees. The expertise of the older generation of scientists will be very difficult to replace.

Director Shank reported that some expected retirements at the Lawrence Berkeley laboratory were forestalled when the decision was made not to terminate that laboratory's contract immediately. He noted that, although the laboratory continues to make scientific progress in a number of areas, including heavy ion fusion, dark energy, and nanoscience, scientists there have expressed concern about the possibility of losing the close collaborations that have existed with the Los Alamos and Livermore laboratories. He believed that recent retirements had been driven as much by the intricacies of the University's retirement system as by anything else. Questions are being asked, however, about the status of the contract and the issues surrounding the situation. Potential employees are concerned about the possibility of not being able to vest in the retirement system before the competition occurs. There are indications that, although morale is improved, recruiting is being affected adversely.

Regent Marcus noted that, while business practices have been the major focus of the discussion, it is really the science that is the most important consideration. He asked about the morale of the Los Alamos laboratory's leading scientists and the laboratory's ability to recruit the best talent. Director Nanos responded that the quality of the science at the Los Alamos laboratory had improved during the past year, according to the year-end review. He believed that attracting the best scientists was dependent in large part on personal relationships and collaborations. No area has lost out in large measure, but questions continue to be asked about the laboratory's future relationship with the University. Recruiters for high-level business positions also get questioned about the laboratory's long-term prospects.

Regent Marcus observed that the shadow that is being cast upon the laboratories concerning the management contracts could have long-term adverse effects. Senior Vice President Darling agreed. He reported that in Washington the laboratories receive high praise for their scientific efforts and contributions to national security, but while the laboratories have been performing their key missions at a level that garners praise, perceived shortcomings within the support areas for those activities have called into question the University's management ability and could jeopardize the contributions that the laboratories and the University are making to the nation.

Regent Pattiz was concerned that the University may have become overly defensive on the issue of the management contracts. He emphasized that the University and the laboratories have a unique and special collaboration that has never been more important to the nation. Whether there is a bidding process or not, it will be very difficult for the government to replace the University as manager and deliver the same high caliber of work. He believed that if bidding for the contract does take place, it may be more political than practical. He was optimistic that when members of Congress and others in Washington come to understand the effect this decision could have on the country, they will be very supportive of maintaining the University's relationship with the laboratories.

[For speakers' comments, refer to the minutes of the September 18, 2003 meeting of the Committee of the Whole.]

The meeting adjourned at 10:55 a.m.

Attest:

Secretaryz