

The Regents of the University of California

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

July 15, 2004

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

Members present: Regents Blum, Dynes, Johnson, Marcus, Montoya, Ornellas, and Parsky; Advisory member Pitts

In attendance: Regents Anderson, Connerly, Hopkinson, Kozberg, Lansing, Lee, Novack, Sayles, and Wachter, Regents-designate Juline and Rominger, Faculty Representative Blumenthal, Secretary Trivette, General Counsel Holst, Treasurer Russ, Provost Greenwood, Senior Vice Presidents Darling and Mullinix, Vice Presidents Broome, Foley, Gomes, and Hershman, Chancellors Berdahl, Bishop, Carnesale, Cicerone, Córdoba, Tomlinson-Keasey, Vanderhoef, and Yang, Acting Chancellor Chemers, Laboratory Directors Anastasio and Nanos, and Recording Secretary Bryan

The meeting convened at 11:12 a.m. with Committee Vice Chair Blum presiding.

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

Upon motion duly made and seconded, the minutes of the meeting of May 19, 2004 were approved.

2. **AUTHORIZATION TO APPROVE AND EXECUTE MODIFICATION TO THE DEPARTMENT OF ENERGY CONTRACTS FOR THE LOS ALAMOS NATIONAL LABORATORY AND LAWRENCE LIVERMORE NATIONAL LABORATORY TO AMEND CLAUSES AS A RESULT OF CHANGES TO THE FEDERAL ACQUISITION REGULATIONS AND THE DOE ACQUISITION REGULATIONS**

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 below:

Summary of Clause Changes

H.006 LONG-RANGE PLANNING, PROGRAM DEVELOPMENT AND
BUDGETARY ADMINISTRATION

Deletes the requirement for an annual Institutional Plan covering a five-year period.

H.014 PROGRAM PERFORMANCE FEE

Changes rating descriptions and increases objectives to 10.

I.011 FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT
2000)

Update May 2004 adds term missed in OCT 2000.

I.015 FAR 52.222-3 CONVICT LABOR (AUG 1996)

Update June 2003.

I.024 FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW
INFORMATION (APR 1998)

Update August 2003 including Alternate I (AUG 2003)

I.027 FAR 52.225-1 BUY AMERICAN ACT–SUPPLIES (MAY 2002)

Update June 2003.

I.028 FAR 52.225-9 BUY AMERICAN ACT–CONSTRUCTION
MATERIALS (MAY 2002)

Update June 2003.

I.029 FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES
(FEB 2000)

Update December 2003.

I.034 FAR 52.233-1 DISPUTES (DEC 1998) Alternate I (DEC 1991)

Update July 2002.

I.039 FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (MAY
2002)

Update May 2004.

I.041 FAR 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN
1997)

Update June 2003.

I.042 FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG
COMMERCIAL VESSELS (JUN 2000)

Update April 2003.

I.075 DEAR 970.5223-2 ACQUISITION AND USE OF ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES (DEC 2000)

Rewritten with new title, AFFIRMATIVE PROCUREMENT PROGRAM (MAR 2003).

New Clauses

I.105 FAR 52.223-10 WASTE REDUCTION PROGRAM (Aug 2000)

Establishes program to promote cost-effective waste reduction in compliance with Federal, State, and local requirements.

I.106 DEAR 970.5223-5 DOE MOTOR VEHICLE FLEET FUEL EFFICIENCY (OCT 2003)

Added to require contractors to comply with Executive Order 13149, Greening the Government Through Federal Fleet and Transportation Efficiency, as well as implementing guidance.

The table of contents for each contract will be revised to reflect these changes.

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

3. UPDATE ON COMPETITION SCHEDULE FOR THE DOE LABORATORIES

Vice President Foley reported on the latest security incident at the Los Alamos National Laboratory and the actions that the University was taking in response. He stated that on July 6 the Nuclear Weapons Physics Directorate determined that two items of classified removable electronic media (CREM) were missing. As serious as this breach is, it is made more serious by the fact that there have been incidents in the recent past and corrective actions taken which should have made it clear to everyone concerned that accountability practices for CREM must be adhered to.

Mr. Foley reported that it is likely that the material will be found. The individuals directly involved have had their security access suspended pending a review of their conduct and a determination of what disciplinary action, including termination, is appropriate. Classified work in the Nuclear Weapons Physics Directorate has been suspended while the investigation goes on. If work at the directorate is to resume, it must be in a serious, controlled, and secure manner. Mr. Foley reported that, with the support of Laboratory Director Nanos, he had designated the newly selected head of security at the Los Alamos laboratory, Mr. Jack Killeen, as a special assistant reporting directly to him. He noted that Mr. Killeen is a seasoned professional in security and security policy who has worked for the Air Force and the Department of Energy.

Mr. Foley reported that he has also directed that all CREM be moved to secure, centralized libraries where they can be controlled by a single project leader. Custody of CREM will be made the full-time responsibility of trained personnel. He stated that the target date of 2006 for completing an inventory of CREM and the establishment of a disc-less, classified computing network called the Red Network will be moved as far forward as much as possible.

Mr. Foley emphasized that there is no instant fix for the laboratory's problems. Measures that have been put in place will take some time to become fully effective. He cautioned that, in the meantime, the antiquated systems in use at the laboratory may lend themselves to future incidents involving human error. He assured the Regents that the University is working closely with local officials of the National Nuclear Security Administration who are conducting their own investigation at the Los Alamos laboratory.

Mr. Foley noted that work is being carried out in many areas at the Los Alamos laboratory in an exemplary fashion. His goal is to raise the standards in all areas. He pledged that classified information and materials will be made secure. Everyone who has access to classified information has been educated as to the rules and has received training as to its handling. Individuals who will not follow the rules will not be allowed to work with classified information or materials and may lose their jobs. Managers and supervisors who oversee operations involving classified information or materials will be held accountable for assuring that the people under their direction follow the rules.

Director Nanos believed that it was important to recognize that the staff at Los Alamos is capable of turning problems around. He observed that physical security, business and management practices, and issues of retaliation and salary equity at the Los Alamos laboratory are not under discussion, as they have been subjected to changes during the past two years that appear to have made positive differences. He recalled that many of the previous security incidents had been due to the antiquated infrastructure at the laboratory and the overwhelming amount of CREM that was present. A list of actions to be taken to improve the infrastructure has been made, and in some areas these actions have been accelerated. In the most recent incident, there are indications that rather than just inventory errors or irregularities associated with the amount of material or antiquated infrastructure, individual employees had not followed regulations and had taken actions that were improper. He announced that he had ordered a laboratory-wide stand down covering all classified activities.

Mr. Nanos observed that the discovery that some employees have been unwilling to follow laboratory rules regarding CREM has identified a level of risk not previously faced. He reported his intention to assess risk levels in all of the organizations in the laboratory and to categorize them in the order of risk. His investigations will cover processes and procedures and the commitment of managers to protect classified material. He had met with the workforce and had emphasized that the risk to their retirement or their continued work with the University was not being generated as much by the

management contract competition as by a few of their colleagues, and that they should cease tolerating noncompliant behavior in all areas associated with safety and security.

President Dynes acknowledged the seriousness of the most recent incident. He expected the full cooperation with Los Alamos laboratory employees in the implementation of the actions that Vice President Foley and Director Nanos had described. He stated that he would tolerate neither a violation of the trust the country had placed in the University nor a willful disregard for policy and safety procedures by any employee at the laboratory. He was adamant that the University's reputation would not continue to be disparaged by the inappropriate action of Los Alamos laboratory employees. It was his expectation that Vice President Foley and Director Nanos would hold division directors responsible for creating an environment and culture in which security is given the necessary attention.

Chairman Parsky agreed that the reported incidents were unacceptable and cannot be tolerated. He observed that negative incidents undermine the good work that is being done at the laboratory. He was informed by Vice President Foley that Director Nanos would report officially to him weekly on the status of CREM-related issues, security, and training activities and that Mr. Killeen has been given authority to put changes into effect immediately. Director Nanos emphasized that work with classified information at the laboratory would not be resumed until he had confidence that it could be carried out safely and securely. Nothing would take precedence over national security. Chairman Parsky asked what the potential consequence was for employees who had not followed procedures. Director Nanos responded that appropriate disciplinary action would be taken once the investigation into the incident was completed, which was expected to be within a few days. The matter will then be referred to the human resources division for a case review.

Committee Chair Blum noted that, notwithstanding that CREM would be centralized, there could be other forms of classified information at risk. He pointed out that there had been recent reports in Washington about the failure of U.S. intelligence generally in connection with 9-11 and weapons of mass destruction in Iraq. He asked how business could be conducted at the laboratory until a secure, centralized classified facility is established. Mr. Nanos emphasized that whereas previous incidents had been related to the struggle to conduct inventories under difficult circumstances, there was evidence that the latest disappearance of material was related not to human error but to the willful disregard of procedures. That discovery had prompted him to order an immediate assessment of risk and to address the cultural and other issues that led to the behavior. He believed that, although some potential for human error may always remain, the attitudes of laboratory employees must change in order for work there to continue. Regent Blum was doubtful that, in such tense times, any degree of error would be acceptable. Vice President Foley assured him that, although they agreed that it would never be possible to erase all chance of error, he and Mr. Nanos, who had spent their careers in an atmosphere where national security was of paramount importance, were committed to minimizing the chances of future security breaches.

Regent Lee was surprised that the Los Alamos laboratory still used storage products that could be removed. He viewed the removal and storage of all CREM as an overdue step.

Regent Connerly noted that the most recent incident was the third in eight months. As a Regent, he believed the University could do without the adverse publicity, but he believed also that there was no other institution in the country that had the capability to handle such a complex institution, administered by human beings handling very delicate matters under the glare of a nation in a period of heightened national security, without encountering similar problems. He emphasized that the nation benefits from the University's laboratory management, but he wondered why other laboratories within the DOE complex were not experiencing similar difficulties. Mr. Foley observed that, because of their missions, the Los Alamos and Livermore laboratories have most of the CREM in the DOE system. The Livermore laboratory began work in the early 1990s to update its systems. It has a central library and a competent and tough custodial system of responsibility, and its facility is contained within one square mile, making it somewhat easier to administer.

Regent Marcus expressed his frustration that much of the Regents' time is taken up not with discussing the important scientific achievements at the laboratories but rather their security problems. He recalled that the University had been alerted to security risks the previous year and had concentrated on improving the situation. He asked whether allocating substantially more money or more staff to security could provide immediate assurance that security breaches would cease. Mr. Nanos reported that 8,000 UC employees and 4,000 subcontractors work at the laboratory and that there are about 12,000 items of CREM in existence. Shifting it to a classified network will cost about \$30 million. Because of the antiquated systems, an inordinate amount of information is created that must be accounted for. Without an engineered solution, the process is subject to human error, and the risk factor is elevated by the impatience or misbehavior of employees. He believed that the culture was such at the Los Alamos laboratory that some of its employees, who may view their work as being too important to be inhibited by the necessity of following procedures, did not understand the seriousness with which their transgressions were viewed by the public. Committee Chair Blum added that they should be made aware that these actions could cause the University to lose the management contract to another entity.

Regent Hopkinson agreed that the major element in the situation is the culture and the tolerance of a level of unacceptable behavior. She did not agree that more incidents of this nature must be anticipated. While employees need to be held accountable and the University needs to respond appropriately to transgressions, management is obligated to communicate to employees what the culture should be and to reinforce correct practices. Mr. Nanos reported that in his discussion with the workforce he had emphasized that the University would not tolerate this behavior and that those who could not reconcile themselves to that fact would be asked to retire or resign. He proposed to seek out those individuals who tend to flout the rules. He recalled that a new system that had been instituted recently for managing safety in the workplace had provoked negative reaction

from employees who trivialized its importance and saw it as interfering with their work. Mr. Foley emphasized that a major focus was to address the resistance of the culture to change.

Chairman Parsky observed that both the systems and the employee problems at the laboratory needed to be addressed. He acknowledged the personal commitment of the Vice President and the Director and urged them to establish a specific timetable for improving the systems. Concerning the employee problems, he suggested that he and President Dynes visit the Los Alamos laboratory to communicate directly to the workforce what the Regents feel about these issues and how important it is to them to continue the laboratory's scientific contribution to the nation. He hoped to make it clear to the employees that they have the potential to destroy the University's chances of continuing its management if they are unwilling to change their attitudes.

Regent Marcus concurred with Chairman Parsky's comments; however, he was skeptical about the ability in the short term to change the culture in an organization that had been used to operating in a certain way for 60 years. He suggested that systems and reviews be developed that foster a gradual cultural change, in recognition that 12,000 employees represent a variety of personalities, attitudes, education, and life stages.

Regent Blum recalled the state of chaos that existed when it was first discovered that proper controls were not in place at the laboratory. Although he acknowledged the severity of the current issue, he emphasized that Vice President Foley and Director Nanos had succeeded in demonstrating improvement in many areas and that this fact had been acknowledged by the Department of Energy.

President Dynes then introduced Mr. Steven Chu, newly appointed Director of the Lawrence Berkeley National Laboratory, noting that he was the Theodore and Francis Geballe Professor of Physics and past Physics Department chair at Stanford University, a Nobel Laureate in physics, and a world-renowned researcher in polymer- and biophysics. Mr. Dynes commented that Mr. Chu is a pioneer in an area that represents the convergence of the physical and biological sciences and that his recruitment attests to the esteem in which the University is held.

Professor Chu praised the work of his predecessor, Director Shank, noting that he had left the laboratory in excellent condition. He commented that, although there is no classified work being done at the Lawrence Berkeley laboratory, there are operations and management issues similar to the ones under discussion that should be taken equally seriously. He believed that if the laboratory is not managed responsibly, it will be in jeopardy no matter how good the science is. He recalled that in the early 1990s, Stanford University was facing \$10 million in fines for environmental health and safety violations, in response to which it formed a committee to decide how to change the culture. It was determined that in order to make the students, post-doctoral students, and professors more aware of the importance of following regulations, each principal investigator should be made responsible for the running of the group.

Mr. Chu believed that there are opportunities at the Lawrence Berkeley laboratory to blend areas in which the laboratory is strong; these include fundamental physics, cosmology, biophysics, and genomics. Attempts to do this are made difficult, however, by the fact that space at the laboratory is so limited that principal investigators are spread out among various buildings. There has been a migration back to the campus of those who have faculty positions, because they feel isolated at the laboratory. Unfortunately, the campus also has very limited space. He did not believe that intellectual units could be formed under these conditions. To establish a core of excellence that nurtures young people, scientists who have moved onto campus should be encouraged to return to the laboratory, but to accomplish this, an aggressive building program is needed. He stated that he was looking forward to working with the chancellor and the Regents to find creative solutions to the problem.

Regent Hopkinson commented that being on a selection committee to assist the President in bringing the finest leaders to the University is one of the most rewarding and important activities of a Regent. She expressed her appreciation to Mr. Chu for having accepted the position of Laboratory Director.

The Committee recessed at 12:23 p.m.

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The Committee reconvened at 1:00 p.m.

4. **DISCUSSION OF THE PROS AND CONS OF COMPETING FOR THE
MANAGEMENT OF THE LOS ALAMOS NATIONAL LABORATORY (LANL)
AND LAWRENCE LIVERMORE NATIONAL LABORATORY (LLNL)**

Due to the lateness of the hour, this item was rescheduled for the September meeting.

[For speakers' comments, refer to the July 15 minutes of the Committee of the
Whole.]

The meeting adjourned at 1:05 p.m.

Attest:

Secretary