

The Regents of the University of California

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

January 15, 2004

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

Members present: *Committee on Oversight of the Department of Energy Laboratories:* Regents Blum, Bodine, Davies, Dynes, Montoya, Moores, Pattiz, Preuss, and Seigler; Advisory members Ornellas and Blumenthal

Committee on Finance: Regents Connerly, Dynes, Hopkinson, Lee, Montoya, Moores, Murray, Preuss, and Sayles; Advisory members Anderson and Pitts

In attendance: Regents Johnson, Kozberg, and Lansing, Regent-designate Novack, Secretary Trivette, General Counsel Holst, Treasurer Russ, Provost King, Senior Vice Presidents Darling and Mullinix, Vice Presidents Broome, Drake, Foley, Gomes, and Hershman, Chancellors Bishop, Carnesale, Cicerone, Córdoba, Tomlinson-Keasey, Vanderhoef, and Yang, Acting Chancellor Chandler, and Recording Secretary Bryan

The meeting convened at 9:45 a.m. with Committee on Oversight of the Department of Energy Laboratories Chair Preuss presiding.

APPROVAL OF ACTIONS NECESSARY TO PRESERVE THE OPTION OF THE UNIVERSITY TO CONTINUE ITS MANAGEMENT OF LAWRENCE BERKELEY NATIONAL LABORATORY, LAWRENCE LIVERMORE NATIONAL LABORATORY, AND LOS ALAMOS NATIONAL

The President recommended that, subject to the express reservation to The Regents of the decision to participate in any contract competition, the President be authorized to take appropriate and necessary measures to preserve the option of the University to continue its management of any or all of the Lawrence Berkeley, Lawrence Livermore, and Los Alamos National Laboratories by maintaining the University's capability adequately and timely to respond to any Department of Energy/National Nuclear Security Administration (DOE/NNSA) Request for Proposals that may be issued as part of such a competition; specifically by:

- A. Executing any modification necessary to extend the operating contract(s) for such laboratories for up to two years and subject to the same terms and conditions, with the concurrence of the Chairman of the Board of Regents, and the Chairman of the Committee on Oversight of the Department of Energy Laboratories, as may be requested

by the Department of Energy and authorized by Section 301 of the federal Energy and Water Appropriations Act for Fiscal Year 2004.

- B. Responding to any public request issued by the DOE/NNSA for expressions of interest and qualifications to manage any or all such national laboratories.
- C. Developing and executing teaming arrangements with others, as appropriate, to strengthen a University proposal for any particular contract, with the concurrence of the Chairman of the Board of Regents and the Chairman of the Committee on Oversight of the Department of Energy Laboratories; organizing proposal teams of University employees, and acquiring related professional services; and bearing the costs thereof with funds made available to the University that are not otherwise eligible to be applied to the general operating costs of the University.

The Committees were informed that Section 301 of the federal Energy and Water Appropriations Act for Fiscal Year 2004 requires the Secretary of Energy, as a condition of applying funding from the appropriation to existing contracts for Lawrence Berkeley National Laboratory, Lawrence Livermore National Laboratory, and Los Alamos National Laboratory, as well as two other DOE National Laboratories, to open these contracts to competition at the conclusion of their existing terms of performance. The current expiration dates for these contracts are as follows:

Lawrence Berkeley National Laboratory	January 31, 2004
Lawrence Livermore National Laboratory	September 30, 2005
Los Alamos National Laboratory	September 30, 2005

Section 301, however, permits the Secretary to extend any or all of the contracts for up to two years to provide additional time to conduct orderly competitions.

The Secretary of Energy made a decision in July 2002 to extend the operating contract for Lawrence Berkeley National Laboratory. The Regents authorized the President in September 2002 to conduct negotiations and execute any modifications to the contract period of performance while a new operating agreement was being negotiated. Enactment of Section 301 has superseded the Secretary's decision, and DOE is preparing to comply with the requirement for competition. The timing and requirements of the competition are unknown; however, the contract term is set to expire on January 31, 2004. Accordingly, that contract will need to be extended during the period when DOE conducts a competition and makes a new contract award. The President will make such incremental extensions to the contract term as may be needed before a new operating contract is effective with whomever DOE selects.

The Secretary of Energy announced in April 2003 his intent to put the contract out for bid for Los Alamos National Laboratory but withheld a competition decision at that time with respect to Lawrence Livermore National Laboratory. Enactment of Section 301 has mandated that the National Nuclear Security Administration, which is a separately organized, semi-autonomous agency within DOE that has cognizance over the national security laboratories, open for competition the contract for operation of the Lawrence Livermore National Laboratory. This is in addition to

the previously announced competition for Los Alamos. The timing and requirements of the competitions are unknown; however, as the competition unfolds there may be a need to extend one or more of these contracts to complete the competition or conduct a transition from the University to another contractor, particularly as the NNSA planning for Lawrence Livermore may not be as advanced as that for Los Alamos.

DOE/NNSA has expressed a desire that the University be willing to participate in each of the competition actions. A recent report of the DOE Blue Ribbon Commission (BRC) on the Use of Competitive Procedures at the DOE National Laboratories recommended that grants of up to \$2 million be authorized for the use by non-profit and educational institutions to permit them to have resources for making competitive proposals. NNSA and the University modified the Los Alamos and Lawrence Livermore contracts in May 2003 to clarify that a permitted use of the fee earned on those contracts includes the preparation and submission of competitive proposals for continued operation of the DOE Laboratories, including Lawrence Berkeley National Laboratory. Due to preexisting contract limitations and the conditions likely to be imposed on any BRC-recommended DOE grants, University funds received either as earned fee or through a BRC-recommended grant will not be available to fund the general operating costs of the University. Accordingly, the use of such funds to prepare for or participate in a competition will not erode the financial ability of the University to accomplish its primary educational and research mission.

It is expected that the period from the date on which DOE/NNSA issues a formal Request for Proposals (RFP) to the date at which a proposal must be submitted could be as little as 45 days. It is important that any organization that is interested take appropriate actions to be ready to submit a competitive proposal shortly after the RFP is published. No proposal from the University will be submitted until The Regents has had the opportunity to determine that the rules of the competition and the terms of any likely resulting contract are appropriate for the University. The time for the University to prepare a competitive proposal will be insufficient unless it has taken steps in advance of the RFP to put itself in a position to compete. President Dynes intends to begin organizing the University for such a competition and to take a number of steps that may be necessary in order for the University either to be eligible to compete or to develop a highly competitive proposal, including but not limited to formally expressing interest in each competition, submitting a formal statement of qualifications, developing teaming arrangements with entities that have specific non-science skills that would make a University proposal more competitive, and acquiring professional services to assist in the development and presentation of the formal proposal.

Although final plans by DOE/NNSA have not been announced, there are indications that DOE/NNSA may require that an organization express its interest and present its qualifications in advance of an RFP in order to be eligible to bid at a later date. Expressing interest and submitting qualifications will not obligate the University or any other contractor to bid, but will merely enable DOE/NNSA to determine the likely extent of competition for any particular contract.

The University has never developed a competitive proposal of the type and scale that will be required for continued management of the DOE Laboratories. The key to success in one or more of these competitions is for the University to demonstrate that, in addition to its unparalleled capability for scientific management, it can be innovative in its business and operational approaches

at the laboratories. President Dynes has been in discussion with a number of industrial organizations that have expressed a desire to join with the University to develop certain aspects of the proposal involving business and operations. It may be necessary to act between meetings of The Regents to conclude effective teaming agreements. The agreements may also contain proprietary information of the industrial organizations that must be held confidential. After concurrence with the Chairman of the Board and the Chairman of the Committee on Oversight of the DOE Laboratories, the President will execute any such arrangements he determines would strengthen the University's proposal without derogation of the University's overall management responsibilities and The Regents' authority to approve submission of the proposal.

As mentioned previously, a competition for the national laboratories will be quite different from other endeavors of the University. Teaming with one or more outside organizations may constitute an important step toward placing the University in a novel and highly competitive position. It may be necessary to acquire professional services to aid the University in this process. The funds used will be those made available to the University through earned fee from the DOE contracts, DOE grants awarded for such purpose, and through advances of others provided under team agreements.

The President will report actions taken pursuant to this action at subsequent regular meetings of the Board and between meetings will confer with the Chairman of the Board and the Chairman of the Committee on Oversight of the DOE Laboratories on such actions.

Vice President Foley reported that a teaming agreement would make it possible to put in place in the laboratories a few dozen experts in both the business and weapons areas. They would agree to sign on for a limited time and would report through the normal chain of command. He reiterated that this arrangement, which will use no University funds, will not commit The Regents to compete for any laboratory contract.

Regent Pattiz commented that he supported the proposed measures, noting that the Regents will be very involved in the project.

Regent Hopkinson also voiced support for this approach, which should enable the business aspects of the laboratories to reach the high level of the science aspects. She moved that the recommendation be amended by the addition of the words "...with the concurrence of the Chairman of the Board of Regents and the Chairman of the Committee on Oversight of the Department of Energy Laboratories" to the second paragraph. The amended motion was duly seconded.

[For speakers' comments, refer to the minutes of the January 15, 2004 meeting of the Committee of the Whole.]

Regent Murray noted that the period between an issue of a formal request for proposals and the date by which a proposal must be submitted could be brief. He observed that the Regents may have little time to make the decision about competing for the contracts. He suggested the Regents schedule a discussion about the pros and cons of having the University compete. He asked that any presentation by the administration be balanced by divergent views. Committee Chair Preuss commented that the University does not yet know for what it would be competing. Once the RFP

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is released, the discussion about whether to compete can begin. He believed the Regents would need to dedicate the time, perhaps at short notice, to become informed fully about the issue.

Regent Lansing agreed that before an intelligent opinion can be formed more information would need to be obtained. She believed it was vital that the Regents become as well informed as possible on both sides of the issue.

Faculty Representative Blumenthal reported that throughout the year a special committee of the Academic Council would be producing a series of white papers intended to inform the faculty and the Regents about issues related to the possible competition for the contracts at the Los Alamos and Livermore laboratories. He recalled that there will be a series of town hall meetings and fora at the various campuses to discuss the issues. He urged Regents to attend one or more of these.

Regent Connerly noted that there are times in competitions when it is not desirable to broadcast one's intentions. He hoped that care would be taken to assess the situation before any further discussion takes place. President Dynes agreed that it would be important for the University to consider the timing with relation to making any declaration of its intent.

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

The meeting adjourned at 10:05 a.m.

Attest:

Secretary