The Regents of the University of California

COMMITTEE ON OVERSIGHT OF THE DEPARTMENT OF ENERGY LABORATORIES
January 18, 2006

The Committee on Oversight of the Department of Energy Laboratories met on the above date at the Price Center, San Diego campus.

Members present: Regents Dynes, Juline, Parsky, Pattiz, Preuss, Rominger, and Ruiz; Advisory member Brunk

In attendance: Regents Gould, Hopkinson, Island, Johnson, Kozberg, Lee, Lozano, Rosenthal, Sayles, Schilling, and Wachter, Regents-designate Coombs, Ledesma, and Schreiner, Faculty Representative Oakley, Secretary Trivette, General Counsel Holst, Interim Treasurer Berggren, Acting Provost Hume, Senior Vice Presidents Darling and Mullinix, Vice Presidents Broome, Foley, Gurtner, and Hershman, Chancellors Carnesale, Córdova, Denton, Fox, and Tomlinson-Keasey, Vice Chancellor Burnside representing Chancellor Birgeneau, Acting Director Kuckuck, Auditor Reed, and Recording Secretary Bryan

The meeting convened at 11 a.m. with Committee Chair Pattiz presiding.

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

Upon motion duly made and seconded, the minutes of the meeting of November 17, 2005 were approved.

2. **STATUS OF COMPETITION AND OTHER MATTERS AT THE DEPARTMENT OF ENERGY LABORATORIES**

Committee Chair Pattiz believed that congratulations were in order for Vice President Foley and his staff, with special recognition to Chairman Parsky for making sure that the Regents were well represented in the process that culminated in the University's successful bid for the management contract of the Los Alamos National Laboratory.

Vice President Foley reported that the Director of the National Nuclear Security Agency had commented to him that the University's transition proposal for the Los Alamos laboratory was the best he had seen. Mr. Foley noted that going through the transition period, which will last until May 31, is a team effort. During this time, three goals must be reached. The first is that the University must continue to perform under the contract still in effect so that the laboratory will be turned over to Los Alamos National Security, LLC (LANS) in the best possible condition. The second is to prepare for the assumption of control by LANS, which will take place in June. The third is to prepare for the closeout of the existing contract.

Mr. Foley reported that in conjunction with the transition activity, which commenced on January 3, there have been orientations and meetings with key personnel at the laboratory and in Washington. The University's bid proposal team was debriefed about its contract proposal and intends to use the information in preparation for a possible bid for the Lawrence Livermore National Laboratory contract. Mr. Foley reported that the University did well in the competition. The one place it lost points was for its previous management performance; however, any negative points were offset by credit given for its successful efforts to address problems that had appeared at the laboratory during the past few years. In all other areas the University was at least equal to or prevailed over its competition. The competitor has announced it will not protest the awarding of the contract. He thanked Chairman Parsky, Committee Chair Pattiz, and everyone who participated in preparing the contract bid. He praised Laboratory Director Anastasio for agreeing to accept the challenge of operating the Los Alamos laboratory.

Chairman Parsky believed that the University won the contract because it had put forward the strongest bid team. He believed also that the Department of Energy wanted to maintain the commitment to science and research at Los Alamos and that gave the University an opportunity to show its strengths. Finally, he stated that in the presentation and during the transition period a clear commitment has been made to the employees at Los Alamos. The transition has created uncertainty, and the University is responsible for easing certain elements of that uncertainty. A commitment was made to the employees that, although there is a shift away from UC to another entity, every effort would be made to put forward a substantially equivalent retirement plan for them. That has been an important element in all the discussions.

Regent Hopkinson congratulated all involved. She suggested that the same diligence that was exercised in the bid preparation be applied to the plan for transition. The Regents and the University will need a well-articulated plan regarding their oversight obligations.

Regent Lozano reported that she had met with the Governor and Speaker of the Legislature of New Mexico, who were favorably disposed towards the outcome of the contract competition. They had expressed the hope that the University will play a larger role in external affairs and community relations around the Los Alamos area. Vice President Foley responded that the LLC was committed to distributing information widely and increasing its outreach efforts.

Regent Lee believed that any profit that was made from the University's management contract should be used to benefit California through such actions as offsetting student fees or establishing scholarships. Mr. Foley responded that it had always been judged appropriate not to co-mingle the monies; otherwise, there is the risk that student fees, for instance, could be affected adversely if the University were to cease managing the laboratory and that the laboratory's activities could be influenced by the necessity of producing a constant and predictable profit margin in order to sustain such commitments. President Dynes added that traditionally it has been believed that part of the strength of

the University's proposal was its commitment to the highest quality science and technology in the interests of national security. In the past, money left after expenses has been devoted to research that is done at the laboratory and as joint projects between the University and the laboratories. Students have benefitted from this practice by having opportunities to engage in that research, and the nation has benefitted through more research that can be undertaken because of this reinvestment.

Regent Juline endorsed Regent Hopkinson's comments regarding the need for clearly defined oversight responsibilities going forward. He asked whether the board appointments to the LLC would be ratified by The Regents. Chairman Parsky agreed that the oversight responsibility was an important subject and believed that it should be a separate item on a meeting agenda before the transition is finished. The entire oversight and representation issue and the role of the Committee will be placed on the agenda for discussion at that time.

3. **AUTHORIZATION TO APPROVE AND EXECUTE MODIFICATION TO THE DEPARTMENT OF ENERGY CONTRACT FOR THE LAWRENCE LIVERMORE NATIONAL LABORATORY TO AMEND CLAUSES AS A RESULT OF CHANGES TO THE FEDERAL ACQUISITION REGULATIONS**

The President recommended that he be authorized to execute a modification to the provisions of Lawrence Livermore National Laboratory contract W-7405-ENG-48 in order to incorporate revisions to four clauses and add one clause, as described below:

I.007 FAR 52.203-12 Limitation On Payments To Influence Certain Federal Transactions (JUN 2003)
Date of clause changed to September 2005. Minor text changes in paragraph (b)(3).

I.012 FAR 52.219-9 Small Business Subcontracting Plan (JAN 2002)
Date of clause changed to July 2005 and requirement added that contractor confirm HUBZone representations.

I.016 FAR 52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation (SEPT 2000)
Date of clause changed to July 2005. Flowdown of clause changed to apply when subcontract may require or involve the employment of laborers and mechanics rather than when the subcontract was expected to exceed $100,000.

I.017 FAR 52.222-11 Subcontracts (Labor Standards) (FEB 1988)
Date of clause changed to July 2005. Definition of construction expanded for the term "site of work" to include secondary sites where significant portions of the work might be constructed and then transported to the primary site of work.

I.109 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (OCT 2005)
At the request of the Department of Energy, new clause I.109 added while retaining the existing Clause I.060, same title. The paragraph (l) of the new clause (Effective Date) acknowledges the presence of the other earlier clause and explains that (1) the old clause governs the indemnity for incidents occurring prior to August 8, 2005 and, (2) the new clause governs indemnity for incidents occurring on or after August 8, 2005 and (3) contractor's liability for violations remain the same as in the earlier contract, regardless of the language in paragraph (i) of the new clause.

As a result of the changes, the table of contents for the LLNL contract will be revised.

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

The meeting adjourned at 11:25 a.m.

Attest:

Secretary