

Office of the President

TO MEMBERS OF THE NATIONAL LABORATORIES SUBCOMMITTEE:

DISCUSSION ITEM

For Meeting of September 13, 2017

**UPDATE ON THE LAWRENCE BERKELEY NATIONAL LABORATORY
CONTRACT REFORM**

EXECUTIVE SUMMARY

The discussion will provide an update on the ongoing negotiation of a substantive modification to the Lawrence Berkeley National Laboratory prime contract with the Department of Energy to make the contract a more useful, efficient, and effective instrument for accountable mission execution.

BACKGROUND

The Regents of the University of California (UC) have held the Lawrence Berkeley National Laboratory (Berkeley Lab) Management and Operating (M&O) contract since the early 1940s. In 2005, the Department of Energy (DOE) re-competed the contract, with UC submitting the only and winning bid. The contract was awarded for a ten-year period with the potential to earn ten one-year award terms based on performance. To date, UC has earned award terms through 2022, with potential to earn award terms through the end of the contract in 2025. The total available fee that can be earned is currently \$6.6 million annually. The current operating budget for the Laboratory is about \$800 million.

Because of UC's strong partnership with the DOE and its local site office, and the continually improving performance of Berkeley Lab, the DOE selected Berkeley Lab and UC to participate in a reform initiative to transform the Berkeley Lab contract into a more effective instrument for mission execution. This contract reform effort aims to provide the M&O contractor greater autonomy for day-to-day work execution along with correspondingly greater accountability for performance. This reform initiative grows out of an effort that was piloted at SLAC National Accelerator Laboratory (SLAC), where its revised contract has been in effect for approximately one year. The SLAC effort provided a strong starting point for this new Berkeley Lab effort, which will be the first of its kind for a large multi-purpose laboratory in the DOE complex. Within UC, the focal point for this effort is the Office of the National Laboratories (UCNL).

Goal and Objectives of Contract Reform

The goal of the reform initiative is to return to the original intent of the government-owned contractor-operated (GOCO) contracting model for Federally Funded Research and Development Centers. Under this model, the government “owned” the mission and provided the funding, and academia and private sector contractors were responsible for mission execution, bringing the people, experiences, systems, and capabilities to perform the work. The original intent was for the government and its contractors to work together as “co-trustees,” each performing its distinct roles. In the ensuing decades, the contractual relationship gradually began to deviate from this basic model, with the addition of more and more contractual requirements aimed at controlling the contractor’s operational execution, many of which were “one size fits all” standards that are not well suited for specific circumstances that may exist at any one laboratory. Although it is impossible (and in many ways undesirable) to return fully to the decades-old original GOCO contracting model, the reform initiative has at its core the goal of recapturing the essence of this original model – an essence that served the nation so well in the early years of the DOE’s mission.

With this goal firmly in mind, UC, Berkeley Lab, and DOE have been negotiating a modification of the Berkeley Lab contract consistent with the following objectives:

- Revising requirements to focus on “the what” and minimize “the how” so that the M&O contractor has greater autonomy for how it executes the work
- Replacing DOE-mandated performance requirements with
 - UC processes and procedures
 - Best commercial practices
- Tailoring many of the remaining DOE-mandated requirements to the specific circumstances of Berkeley Lab
- Increasing UC oversight and accountability with the intent that as UC “steps up,” DOE will “step back”
- Establishing a more deliberate and defined contract maintenance process that will control the requirements “creep” that tends to occur during the life of the contract
- Driving DOE decision-making to the DOE site office rather than headquarters level
- Clarifying ambiguities, eliminating redundancies, and removing inapplicable requirements
- Reorganizing the contract according to topical areas to serve as a better guide for Laboratory managers responsible for executing requirements.

Together, implementation of these objectives through contract reform will move the parties closer to the underlying goal of returning to the essence of the original GOCO model.

Reform Initiative Previously Executed at SLAC

SLAC, operated by Stanford University, piloted the contract reform initiative. The Department of Energy and SLAC entered into negotiations in 2015, culminating in a substantial contract modification in October 2016.

There are a number of similarities between the revised SLAC contract and the modification under negotiation at Berkeley Lab. Both share the same basic contract goals and objectives, as outlined above. They also share a common vision for streamlining requirements in many of the same areas, including for environment, safety and health; business systems; and cybersecurity. UC is negotiating a process similar to that adopted by SLAC for ensuring that future contract modifications over the remaining life of the contract are consistent with reform initiative's goals and objectives. And, similar provisions to those in the SLAC contract are under consideration for tying fee more closely to performance.

There are also a number of differences. Berkeley Lab is a more complex, multi-purpose laboratory than SLAC. As a result the Berkeley Lab negotiations entail consideration and negotiation of a larger number and wider variety of requirements, including subject areas largely untouched by the SLAC reform effort, such as capital projects and Strategic Partnership Projects, which are Lab research projects sponsored by other government agencies or the private sector, or Cooperative Research and Development Agreements, which give private sector entities the ability to support joint research projects at the Lab. Another difference is that the DOE is willing to negotiate modification of a small number of requirements in the Berkeley Lab contract that are mandated for all government contracts regardless of sponsoring agency as specified in the Federal Acquisition Regulation; whereas in the SLAC case only DOE-specific requirements were open to negotiation and modification.

Current Status of Negotiations

UCNL, Berkeley Lab, and the DOE have formed teams to review and optimize every contract requirement. These teams are engaged in ongoing negotiations, which began in June of this year. The teams are comprised of subject-matter experts representing the University, the Laboratory, and the DOE. The teams have reorganized the contract requirements according to the major performance categories stipulated in the annual DOE performance management plan (mission accomplishment, leadership and management, safety and health, business systems, facilities and infrastructure, security and emergency management). They have also delineated which contract requirements are proposed to be deleted, modified, or left unaltered. The teams are currently exchanging draft redline versions of the various contract requirements targeted for modification. Examples of contract modifications being considered include: eliminating burdensome reporting requirements associated with procurement of certain items; use of University policies regarding human subjects in research, in lieu of corresponding DOE directives; replacing DOE directives regarding personal property management with commercial standards; and the development of a Lab-specific cybersecurity plan in place of DOE's complex-wide cybersecurity requirements.

Expected Impacts for UC and Berkeley Lab

At the conclusion of the negotiations, UC should stand to benefit substantially in terms of bettering the contract risk profile, establishing a closer working relationship with the DOE, enhancing operational efficiencies, and maintaining Berkeley Lab and UC leadership in the DOE complex.

Replacing DOE-mandated requirements with appropriate site-specific, UC, or industry-wide standards will result in reduced duplication and removal of potential inconsistencies. These more streamlined and tailored requirements will allow for more efficient uses of resources, allowing the Lab to get the most out of each research dollar made available by the DOE and other sponsors.

The intense negotiation of each and every contract requirement is currently resulting in closer working relationships among UC, Berkeley Lab, and the DOE, with the added benefit of contributing to a greater understanding of contract requirements and associated risks by all parties.

The modified contract will also have the benefit of maintaining Berkeley Lab's leadership and competitive advantage within the laboratory complex. SLAC is pursuing a second revision of their new contract while Brookhaven and Thomas Jefferson National Labs are the only other laboratories that have been offered the opportunity to join this process.

Along with these benefits, there will be greater expectation for oversight and accountability. UC, via UCNL, will need to provide effective oversight of Berkeley Lab activities, leveraging the resources available in the Office of President, especially in areas where UC standards will be replacing DOE requirements. The expectation for greater accountability for any performance failures at the Lab may manifest in more frequent decrements to, and variability in net fee earned by, the University.

Next Steps

The current plan is to achieve alignment on the proposed contract modification by the teams of subject-matter experts as well as the leadership of Berkeley Lab, UCNL, and the DOE Berkeley Site Office, at which time the parties will seek all the requisite approvals from their respective organizations. For the DOE, this would include from headquarters in Washington, D.C. The current projection is to present the final version of the contract for Regents' approval at the November Regents meeting, with a start date for the modified contract projected for January 1, 2018.

Key to Acronyms

DOE	United States Department of Energy
GOCO	government-owned contractor-operated
SLAC	SLAC National Accelerator Laboratory
UCNL	University of California Office of the National Laboratories