

The Regents of the University of California

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

September 18, 1997

A Special Joint Meeting of the Committee on Oversight of the Department of Energy Laboratories and the Committee on Finance was held on the above date at UCSF - Laurel Heights, San Francisco.

Members present: ***Representing the Committee on Oversight of the Department of Energy Laboratories:*** Regents Atkinson, Davies, del Junco, Gonzales, Johnson, Preuss, and Soderquist; Regent-designate Miura

Representing the Committee on Finance: Regents Atkinson, Connerly, del Junco, Johnson, Lee, Levin, and McClymond; Regents-designate Miura and Willmon

In attendance: Regents Khachigian, Montoya, and Nakashima, Faculty Representatives Dorr and Weiss, Secretary Trivette, General Counsel Holst, Treasurer Small, Provost King, Senior Vice President Kennedy, Vice Presidents Darling and Gomes, Chancellors Carnesale, Dynes, Greenwood, and Orbach, Laboratory Directors Hecker, Shank, and Tarter, and Recording Secretary Bryan

The meeting convened at 5:25 p.m. with Committee on Oversight of the Department of Energy Laboratories Chair Preuss presiding.

1. READING OF NOTICE OF MEETING

For the record, it was confirmed that notice was given in compliance with the Bylaws and Standing Orders for a Special Meeting of the Board of Regents and its Committees, for this date and time, for the purpose of considering matters pertaining to the University's contracts to operate Los Alamos National Laboratory, Lawrence Berkeley National Laboratory, and Lawrence Livermore National Laboratory.

2. **APPROVAL OF CONTRACTS FOR OPERATION OF LOS ALAMOS NATIONAL LABORATORY, LAWRENCE BERKELEY NATIONAL LABORATORY, AND LAWRENCE LIVERMORE NATIONAL LABORATORY AND CERTIFICATION OF THE ADDENDA TO THE SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT FOR OPERATION OF LAWRENCE BERKELEY NATIONAL LABORATORY AND THE ENVIRONMENTAL IMPACT REPORT FOR OPERATION OF LAWRENCE LIVERMORE NATIONAL LABORATORY**

The President recommended that he be authorized to approve and the Officers of The Regents be authorized to execute an extension of the contracts for the management of the Los Alamos National Laboratory, W-7405-ENG-36, the Lawrence Berkeley National Laboratory, DE-AC03-76SF00098, and the Lawrence Livermore National Laboratory, W-7405-ENG-48, for a five-year term, ending on September 30, 2002, with an option to extend to September 30, 2007, said contract providing that The Regents are responsible for modification of the prime contract, except for funding modifications which may be executed by the President, and that the President is responsible for modification of appendices to the contract.

The President further recommended that:

- A. The Regents consider the Addendum to the Supplemental Environmental Impact Report (SEIR) for the contract between the United States Department of Energy and The Regents of the University of California for operation and management of the Lawrence Berkeley National Laboratory and adopt the Findings.
- B. The Regents consider the Addendum to the 1992 Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the contract between the United States Department of Energy and The Regents of the University of California for operation and management of the Lawrence Livermore National Laboratory and adopt the Findings.

It was recalled that on September 15, 1995, The Regents instructed the President to enter into discussions leading to negotiations with the Department of Energy (DOE) to determine whether acceptable terms could be agreed on to extend the current contracts for the continued management of the Lawrence Berkeley National Laboratory, Lawrence Livermore National Laboratory, and Los Alamos National Scientific Laboratory for the period October 1, 1997 through September 30, 2002.

Discussions between DOE representatives and University administrators began soon thereafter to determine whether general terms and principles viewed as essential to the University and agreed to by DOE in the 1992 extensions were consistent with recent contract reform principles adopted by DOE and, if not, to assess the extent to which the current contracts were not fully in line with contract reform. After the discussions

concluded that essential University requirements could be maintained and that certain revisions to the contracts were required to implement fully contract reform, The Regents authorized the President on June 21, 1996, to commence formal negotiations.

The University and DOE negotiating teams began formal discussions during July 1996. The University presented an update on the negotiations at The Regents meeting of January 17, 1997.

Summary of Essential University Requirements Contained in the Proposed Contracts

As reflected in the current contracts, The Regents have endorsed the following principles that continue to be featured in the laboratory management contracts:

- Preservation of the principle of "partnership." This has been a basic element of the laboratory management contracts for the duration of this contractual relationship between the University and the federal government. This principle remains intact and is reflected in the performance-based management process; the maintenance of the senior level council comprised of University, laboratory and government executives to communicate actively on programs and policies and, as needed, apply a "common sense" approach to issues resolution; and DOE's respect for those requirements placed upon the University as a State agency, including defense of employees, personal information privacy protections, management of the UC Retirement Plan, and public information policies.
- Preservation of the no gain/no loss philosophy of management of the laboratories. As an instrumentality of the State of California, the University of California historically has not entered into an agreement for the management of the laboratories which obligated or anticipated that any substantial University funds would be expended for laboratory management purposes. The contract is consistent with this philosophy by virtue of the provision for a program performance fee, a limitation of liability provision, additions to the contingency reserve, and the continued ability of the University to terminate the contract.
- Preservation of the academic atmosphere at the laboratories. This continues to be a cornerstone of the contract, is set forth as a principle of operation, and has become a routine provision in DOE contracts with educational institutions. Key to this atmosphere is the continued linkage between the University's comprehensive personnel policies and procedures and personnel policies applicable to laboratory employees. The contract contains a number of other provisions that reflect the academic nature of the University, including protections for speech and publication, University-ownership of intellectual property and the application of the University royalty policies, access of foreign

scientists, graduates and post doctoral students to laboratory facilities, and campus research and supporting efforts to the laboratories.

- Retention of the Laboratory Director, Deputy and Associate Directors in the University Senior Management Program. This objective is satisfied by retaining the Laboratory Senior Management Program and the continued inclusion of these individuals in the program.
- Continued support from the DOE for complementary and beneficial activities and collaborative research between the campuses and the laboratories. The University has continued support for these purposes through contract compensation paid the University under the contract.
- Enhanced University involvement in the work of the laboratories as they seek new programmatic directions. The University, through the President's Council on the National Laboratories, continues to assist the government in developing new areas of endeavor for the laboratories.
- Strengthened University management oversight capabilities for the laboratories. The contract continues to recognize the role of the Laboratory Administration Office and provides earmarked funds for that activity under the contract.

Noteworthy Contract Reform Elements of Proposed Laboratory Management Contract

The contract represents a continuation of the current University requirements along with implementation of DOE's contract reform initiatives announced by the Secretary of Energy in February 1994.

Performance-Based Management

The recommended agreement is predicated on continuation and improvement of the performance-based management system reflecting the principles of contract reform announced by the Secretary of Energy in February 1994 and reflecting the objectives of the Department's Strategic Plan as required by the Government Performance Results Act of 1993. The University and the DOE have agreed to incorporate the specific performance objectives, criteria, and measures against which the University's management performance is evaluated. The contract also includes a procedure for an overall evaluation of laboratory administrative performance and of the conduct of science, engineering, and technical work. The evaluation will continue to be a factor in determining the salary for Laboratory executives as well as affecting overall remuneration to the University (see discussion of contract compensation, below).

Contract Compensation

Compensation of the University for managing the laboratory for DOE will be provided in part through indirect costs totaling \$11 million per year. The indirect payment has been calculated consistent with federal requirements pursuant to an audited proposal of the University and is not subject to future adjustment during the term of the contract extension.

The contract also provides for the payment of \$14 million annually to the University as a program performance fee. These funds will be available for risk management costs associated with the University's laboratory management, including additions to the contingency reserve fund on which interest may be earned and accrued. The University applies these funds to defray any costs associated with the laboratories that are not otherwise reimbursable by DOE and for funding enhanced, complementary, and beneficial activities and fostering increased collaborative activities between University campuses and the laboratories, as well as supporting University-directed laboratory research.

As part of the contract reform initiative, the program performance fee is subject to upward and downward adjustment related to the annual ratings of the laboratories under the performance-based management system. Since 1992, the University has demonstrated continued outstanding scientific and technological accomplishment and has strengthened the laboratories' administration and operations such that it can be anticipated that the annual review will result in the program performance fee being increased above \$14 million. The maximum that the University can receive under the contract is \$16 million per year. Although a downward adjustment of as much as \$9.8 million is possible if there is a total failure in the scientific and technological performance of all three laboratories as well as in all administrative and operational areas, a minimum fee of \$4.2 million a year is assured. The actual history of University payments for costs associated with laboratory operations has been less than a total of \$5 million over the past five years. Nevertheless, DOE has agreed with the University that it is prudent to provide a program performance fee in the amount described.

A review of the rating history suggests that any probable downward adjustment would be unusual and is unlikely to exceed \$2 million in any given year. An addition of \$5 million which the President proposes to add to the \$15 million post-contract contingency reserve established in 1993 and 1994 would bring the total reserve to \$20 million. This reserve was created to assure that the University has funds on hand after the contracts are complete to discharge any claims not otherwise reimbursable by the government, even though operations have ceased and no new risks are being incurred. This reserve amount will be more than adequate to assure that any downward adjustment occurring in any of the next five years does not put the University assets unrelated to the laboratories at significant risk. If draws are made on the post-contract contingency reserve, the amount will be refunded to the reserve from fees paid to the University in the following year.

Finally, the contract includes a provision for full funding of the University's Laboratory Administration Office, an amount not to exceed \$4.5 million annually.

DOE Directive Process

The contract continues the process of analyzing the content of prospective directives for consistency with the provisions of the contract. Since 1992 DOE has made significant improvements in its Orders system enabling the University and other contractors to provide greater input into their development, with a consequent improvement in the overall system. Furthermore, there has been a recognition in the contract that environment, safety, and health requirements are often better implemented through site specific programs. Consequently, there will be greater reliance in the future on national standards and a reduction in the size and complexity of the DOE Order system. Finally, there is recognition that no directive can modify the terms and conditions of the contract; such modifications can come about only through bilateral agreement as described below.

Term and Termination Provisions

As part of contract reform DOE is seeking to enhance performance of non-profit contractors by including an express noncompetitive extension option in its management and operating contracts which may be exercised by DOE if the contractor's performance has been satisfactory. If implemented, this provision can reduce the effort on both the part of DOE and the University at the end of the five-year term. The University, as described below, is not obliged to extend the contract if it determines that continuing to contract is not in the best interests of the University.

The contract includes termination provisions which can be activated by either party at will, without a stated reason, which provides for 18 months' notice and specifies steps for severance of the contractual relationship. This is favored by both parties as an important mechanism to which recourse can be made should either UC or DOE be dissatisfied with the contract relationship. It is of particular import to the University as a means of limiting future liabilities associated with laboratory management should the loss experience threaten to deplete the contingency reserve without expectation of replenishment through the program performance fee.

Finally, as part of contract reform, should DOE terminate the contract for certain misconduct or for complete failure to do satisfactory science and technology and administration and operations, the University would bear some of the costs incurred as part of the termination process. This amount is capped for each contract and totals an amount not to exceed \$1.75 million; however, DOE continues to be obliged to pay for the administration of a contract close-out and all claims in settlement and termination in the same manner as it was obliged to do in prior contracts.

Standard Clauses

The contract includes a number of standard clauses promulgated by the Department of Energy or other government agencies for inclusion in agreements with contractors operating DOE facilities as part of "contract reform" and other revisions to federal contract law in the past five years. In the course of negotiations, the University and DOE continued the practice adopted in 1992 to include standard clauses whenever there was no inconsistency with the fundamental objectives of the University as described previously. Where a standard clause violated this criterion, the clause was either excluded from the contract or revised to conform to the specific needs of the University. Examples of subjects covered by new standard and revised clauses in the contract include environment, safety and health; make or buy determinations; overtime management; whistleblower protection against retaliation; employee protections in downsizing actions; protection of certain classes of government property involving health hazards and nuclear proliferation; procurement integrity; public access and involvement; and contract changes.

Indemnity and Risk Management Issues

The University's management of the laboratories during the past half century has never been entirely free of risk. As a consequence of the 1992 contract extension negotiations, additional risk was accepted in exchange for a program performance fee. Much of this risk was required by congressional action during the 1980s. In addition to availability of the annual performance management fee, the University established a contingency reserve fund from fee revenues on which interest continues to be earned and accrued. Loss experience during the past five years has been well within the coverage of the fee and contingency reserve.

In the proposed contract the University accepts an additional increment of risk beyond that in the current contract. The most significant type of risk is that associated with "at fault" fines and penalties. This risk arises as a consequence of the passage of the Federal Acquisition Streamlining Act of 1994. There are also some other liabilities that DOE has asked the University to assume as part of its contractor accountability initiative; for example, penalties for violations of the Cost Accounting Standards, warranties on construction projects, whistleblower defense costs and damages, certain property losses, and expansion of the number of senior managers whose misconduct can make certain costs unallowable. These risks are largely controllable with appropriate management processes in place, something which DOE is seeking to encourage in all of its management and operating contractors through contract reform. The University's implementation of the performance-based management system initiated in 1992 suggests that these risks are avoidable to a great extent. Further, the contract includes a financial limit or "cap" on the amount of risk that the University accepts for these risks which are policy-based rather than statutorily mandated. The cap protects the University in the event that management systems do not control these risks. The amount of the cap is well within the total amount of the program performance fee paid to the University under the contract.

While the contract essentially offers the long-standing general indemnity protection that existed in prior contracts, the University is not indemnified against "unallowable costs." In 1992 the contract was modified as follows:

- The Contracting Officer could issue prospective special instructions making previously allowable costs unallowable prospectively.
- The "good faith" certification by The Regents, converting certain unallowable costs to allowable, was eliminated.
- The number of expressly listed unallowable costs, including Price-Anderson Act criminal fines and penalties, and University defense costs in formal proceedings between the University and the Government, was increased.

During the past five years none of these modifications generated a substantial increase in liability. The single largest claim involved an allegation of a "false claim" that was settled by the University. That claim could have been made under prior contracts; however, the investigation and defense costs associated with the claim, about 10 percent of the settlement amount, were disallowed pursuant to the 1992 modifications.

The contract continues to contain complete protection for the University against third party liabilities arising from nuclear incidents occurring within the United States in accordance with the Price Anderson Act. The University continues to be subject to risk of criminal penalties imposed by the 1988 amendments to the Price Anderson Act for Act violations that result or could have resulted in a nuclear incident. The University retains its immunity from Price Anderson Act civil fines and penalties.

Those amendments also restricted indemnification under the Act of third party liabilities should a nuclear incident occur overseas. The contract will provide broader indemnity than the Price Anderson Act pursuant to DOE's authority under Public Law 85-804 should a nuclear incident occur overseas as soon as the Secretary of Energy issues a Memorandum of Decision granting the University's request to cover certain overseas activities conducted as part of the contract work. This current use of Public Law 85-804 authority gives greater credence to the DOE promise in 1992 which carries forward into the future to consider in good faith a request for indemnification in the event that there were to be an insufficiency in the DOE appropriation or in the event that indemnification is required in the post-contract termination period.

The types of risk imposed upon the University in the 1992 extension and the contract are greater than those arising from earlier contracts. However, the experience of the past five years suggests that the allowable cost provisions, the amount of the program performance fee, the size of the contingency reserve, the application of caps on certain liabilities, the implementation of performance-based management systems, and the right of the University to terminate the contract prior to contract expiration, are sufficient

reasonably to assure that the University can perform the contract without placing any significant amount of University assets unrelated to the operation of the laboratories at risk.

Amendment of the Contract and Appendices

The contract provides that amendment of the prime contract will be accomplished by bilateral action of The Regents and DOE, except for the execution of modifications for funding for the laboratory. The contract provides, as has been the case historically, that the amount of contract funding may be increased unilaterally by the acceptance by the President of the University of a contract modification, or may be increased or decreased by a contract modification executed bilaterally by DOE and the Secretary of The Regents. Appendices may be amended bilaterally by the DOE contracting officer and the President of the University under the contract. This is consistent with the current authorization to the University President to amend Appendix A (concerning personnel administration) of the current contract. This provision will enable efficient modification of the contract appendices as may be necessary for the efficient performance of the University's management obligations, particularly those in the area of personnel administration (Appendix A), performance measures (Appendix F), and DOE Orders and other directives (Appendix G).

Distinct Aspects of the Los Alamos National Laboratory Contract

Regional Involvement

DOE and the communities in northern New Mexico have requested that the University cooperate, at federal expense, in a joint strategy to minimize regional dependence on federal investment. As in communities in Hanford, Washington, and Oak Ridge, Tennessee, much of northern New Mexico's development has been linked to the Manhattan Project and the Cold War, including federal subsidies which have been reduced or eliminated. Unlike those other communities, northern New Mexico has been unable to develop an infrastructure which supports a significantly broader base of employment than that directly related to the laboratory and its major on-site subcontractors.

Beginning in 1996, both laboratory management and representatives of the Office of the President have been actively engaged in developing and implementing a cooperative strategy. The contract memorializes the commitment of the University to play a role along with regional communities and governmental authorities in generating and strengthening regional business enterprises, prompting greater regional employment and infrastructure, and lessening regional dependence on federal expenditures. Three contract appendices set forth the specifics of the joint strategy:

- Appendix J describes agreed-upon strategies for laboratory purchasing programs to generate and strengthen regional business enterprises and stimulate

greater regional employment and infrastructure development. Elements include a regional purchasing preference, a regional procurement advisory group involving local chambers and businesses, and the commitment that major on-site subcontractors will be required to demonstrate how they will conduct business in a manner which appropriately strengthens the region.

- Appendix N describes the establishment of the Los Alamos National Laboratory Foundation that will be the focal point for regional educational enrichment to K-12 school districts, educational outreach programs to K-12 and higher educational institutions, and involvement in community charities and developmental programs. The appendix also sets forth the commitment to have the laboratory provide appropriate in-kind support for the Foundation and other community assistance. Finally, the presence of the University of California Northern New Mexico Office is described--a tangible corporate presence and involvement in the region.
- Appendix M describes a Technology Commercialization program to improve mechanisms for laboratory technologies to stimulate new business startups, attract entrepreneurs, create alternative job opportunities, and attract new businesses and capital to the region while also continuing to serve the nation as a whole. Part of this program includes a technology development fund, paid for by the federal government and administered by the laboratory, to help aid new technology startups with capital acquisition and business planning. There are also provisions to enable laboratory employees who have promising business plans using laboratory technology to take an administrative leave to develop the business and expand regional employment, with some assurance that they can return to the laboratory in the event that the venture fails.

Special Assessment

Consistent with the provisions of then-Secretary of Energy O'Leary's Decision Memorandum authorizing a contract extension, DOE will conduct special assessments of UC performance at LANL in the first two years of the contract against specific performance objectives identified in the clause as well as the annual performance-based management review generally referred to as the "Appendix F" process. There will be an initial review after the first year which will be preliminary and advisory in nature. The final review will occur after the second year of the contract. The specific performance objectives relate to environment, safety and health, environmental restoration, waste management, and regional involvement by UC and LANL. The objectives are reasonable, and actions are currently under way to meet them. Given current planning and actions, it is not anticipated that these measures will be difficult to achieve.

DOE will perform the assessment using Albuquerque Field Office personnel and such other DOE employees as the Contracting Officer may select. The results of the review

will be provided to UC before being submitted to the Secretary of Energy, and UC will have an opportunity to comment. The Secretary will use the annual reviews, the Appendix F ratings and UC comments to assess whether to exercise DOE's right to terminate the contract prior to the end of the contract term. If all performance objectives are met, there will be no termination. If some of the performance objectives are not met, the Secretary has sufficient latitude to determine that there should be no termination either in light of the overall performance of UC at LANL or if the public interest would not be served thereby. If most or all of the performance objectives are not met, the Secretary is not required under the clause to terminate but might require additional assurances to avoid exercising the termination provision.

In the event the Secretary of Energy were to direct that there be a termination of the contract based on the results of the review, the University would be liable for up to \$875,000 for the cost of preparing a settlement proposal, but all other costs of termination are paid for by the government in accordance with other provisions of the contract.

Other Appendices

The LANL contract contains the following appendices in addition to those referred to above that are distinct from those of the other two laboratory management contracts proposed for Regental adoption:

- Appendix E - Statement of Work
- Appendix G - DOE Directives

Distinct Aspects of the Lawrence Berkeley National Laboratory Contract

As with the LANL and LLNL contracts, LBNL's Appendix E - Statement of Work and Appendix G - DOE Directives are distinct from those of the other two laboratory management contracts proposed for Regental adoption. The contract also has special provisions reflecting the fact that the facility is situated on University-owned land and uses campus facilities from time to time and that the nature of the work, in contrast to the other two DOE laboratories operated by the University, does not involve classified materials or nuclear weapons. Finally, the lease of University property is reflected in the manner it was prior to the 1992 contract extension; that is, the rent is considered nominal, and the University is compensated for its indirect costs oversight and management at a level which is equal to the sum of the fixed payment in lieu of indirect costs and the ground lease in the 1992 contract extension.

Distinct Aspects of the Lawrence Livermore National Laboratory Contract

As with the LBNL and LANL contracts, LLNL's Appendix E - Statement of Work and Appendix G - DOE Directives are distinct from those of the other two laboratory management contracts proposed for Regental adoption.

Environmental Impact Summary for Lawrence Berkeley National Laboratory

In 1992, as part of the action to renew the contract between the University of California and DOE to manage and operate the Ernest Orlando Lawrence Berkeley National Laboratory, a Supplemental Environmental Impact Report (SEIR) was prepared which covered all phases of LBNL development and operations during the five-year contract period. The Regents, as Lead Agency under the California Environmental Quality Act (CEQA), certified the SEIR in conjunction with approval of the contract and issued a Notice of Determination on November 20, 1992.

The specific project evaluated at that time was extension of the contract between the University and DOE for the University's continued operation and management of LBNL for the period October 1, 1992, through September 30, 1997, including continued implementation of the 1987 Long Range Development Plan (LRDP) for LBNL. In 1987, LBNL completed a comprehensive review of the environmental impacts of LRDP implementation in an LRDP EIR. The 1992 SEIR updated the information and analysis set forth in that EIR. Activities evaluated included programmatic enhancements and modifications of facilities and programs at the LBNL site, on the UC Berkeley campus, and at LBNL offsite leased facilities in support of research and development missions established for LBNL by Congress. The evaluation also considered the impacts of new construction, new program development, infrastructure and building maintenance, including replacement or upgrading of utility systems, minor modifications to buildings, general landscaping, road maintenance, safety improvements, and various routine support activities.

The proposed contract is now scheduled for extension from October 1997 through September 2002, with an option to extend an additional five years, to 2007. Consequently, a review of continued LRDP implementation was performed to determine the appropriate level of environmental analysis needed to support the contract decision in compliance with the requirements of CEQA and the State CEQA Guidelines. For purposes of this environmental analysis, it was assumed that the contract will extend until 2007 and that during the contract term LBNL may be developed as projected in the LRDP to occur sometime after the year 2000. It was determined that an addendum to the 1992 SEIR was appropriate as compared to a new supplemental EIR or a subsequent EIR.

Briefly, the decision to prepare an addendum or a subsequent or supplemental EIR depends upon whether: (1) there have been substantial changes in the project or in the circumstances surrounding the project that require major revisions to the SEIR because of new or substantially more severe environmental impacts; or (2) new information shows that the project would have one or more significant effects not discussed in the SEIR, that significant effects previously examined would be substantially more severe than shown in the SEIR, that mitigation measures or alternatives previously found to be infeasible would in fact be feasible but the applicant declines to adopt them, or that mitigation measures or alternatives that are considerably different from those analyzed

in the SEIR would substantially reduce one or more significant impacts but the applicant declines to adopt them. If the proposed project involves such changes or new information, then the University must prepare a supplemental or subsequent EIR. If the proposed project does not involve such changes or new information, then an addendum may be prepared.

The Addendum to the 1992 SEIR identified changes to existing LBNL operations and programs since certification of the 1992 SEIR as well as proposed changes through 2007 to determine whether the proposed project involves substantial changes in the project or circumstances surrounding the project, or whether the project would result in one or more new or substantially more severe significant environmental effects. The standards of significance used were the same as those used in the 1992 SEIR except for air quality, as new standards of significance have been adopted due to changes in the local implementing regulations since 1992.

Changes in circumstance and environmental impacts were evaluated for the following resource categories: geology, soils, and seismicity; hydrology and water quality; biological resources; historical and archaeological resources; visual quality; land use; population, employment, and housing; traffic, circulation, and parking; air quality; noise; public services; utilities; energy; and hazardous materials, including hazardous materials handling, disposal of hazardous materials, hazardous waste minimization, hazardous materials transportation; regulated building components, worker safety and health, emergency preparedness and response, remediation activities, and environmental monitoring. All impacts were found to be less than significant or within the parameters of those analyzed in the 1992 SEIR.

Based on the information in the Addendum, it has been determined that the proposed project does not involve substantial changes in the project or in the circumstances surrounding the project as described in the 1992 SEIR that would result in one or more new or substantially more severe significant impacts. The proposed contract extension would not result in any new cumulative impacts or increase the severity of the cumulative impacts previously identified. No growth-inducing changes have occurred as a result of LBNL operations and none are anticipated. The proposed project is consistent with the analysis presented in the 1992 SEIR. Although public review of an addendum is not required under provisions of CEQA, notice of the availability of the Addendum to the 1992 SEIR was published in local newspapers a few days in advance of the special meeting.

The Findings indicate that the impacts and mitigation measures have been adequately addressed in the 1992 SEIR for LBNL, as amended by the Addendum to the SEIR, and that use of the Addendum is an appropriate basis upon which to approve this contract, in conformance with CEQA.

Environmental Impact Summary for Lawrence Livermore National Laboratory

In 1992 as part of the action to extend contract W-7405-ENG-48 between the DOE and the University, an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the continued operation and management of Lawrence Livermore National Laboratory was prepared. The scope of the document included near-term (within five to ten years) impacts. The Regents, as lead agency under the California Environmental Quality Act, certified the EIR in conjunction with approval of the contract and issued a Notice of Determination on November 20, 1992. DOE, as the federal agency under the National Environmental Policy Act, adopted a Record of Decision for the EIS on January 27, 1993.

The specific project evaluated by UC was extension of the contract between UC and DOE for the University's continued operation and management of LLNL for October 1, 1992, through September 30, 1997. The proposed DOE action was to continue operation of the facility, including the near-term proposed projects. The 1992 EIS/EIR comprehensively evaluated the potential impacts of operation and management of LLNL through 2002. Activities evaluated included programmatic enhancements and modifications of facilities and programs at the LLNL Livermore site and at LLNL's Experimental Test Site (Site 300) in support of research and development missions established for LLNL by Congress and the President. The evaluation also considered the impacts of infrastructure and building maintenance, minor modifications to buildings, general landscaping, road maintenance, and similar routine support activities.

The proposed contract is now scheduled for extension from October 1997 through September 2002 and as such a review of operations and proposed projects was performed to determine the appropriate level of CEQA analysis needed to support this decision under CEQA and the State CEQA Guidelines. It was determined that an addendum to the 1992 EIS/EIR was appropriate as compared to a supplemental EIR or a subsequent EIR. The decision to prepare an addendum is based on the same criteria discussed above for LBNL.

The Addendum to the 1992 EIS/EIR identified changes to existing LLNL operations and programs since certification of the 1992 EIS/EIR as well as proposed changes through 2002 to determine whether the proposed project involves substantial changes in the project or circumstances surrounding the project, or whether the project would result in one or more new or substantially more severe significant environmental effects. The standards of significance used were the same as those used in the 1992 EIS/EIR except for air quality and prehistoric and historic cultural resources as new standards of significance have been adopted due to changes in the law and implementing regulations since 1992.

Changes in circumstance and environmental impacts were evaluated for the following resource categories: land use and applicable plans; socioeconomic characteristics; community services; prehistoric and historic cultural resources; aesthetics and scenic resources; meteorology; geology; ecology; air quality; water; noise; traffic and transportation; utilities and energy; materials management; waste management;

occupational protection; site contamination and remediation; and, environmental compliance and inadvertent releases. All impacts were found to be insignificant or within the parameters of those analyzed in the 1992 EIS/EIR.

Based on the information in the Addendum, it has been determined that the proposed project does not involve substantial changes in the project or in the circumstances surrounding the project as described in the 1992 EIS/EIR. Nor does the proposed project indicate that the project will result in one or more new or substantially more severe significant impacts. The proposed project would not result in any new cumulative impacts or increase the severity of the cumulative impacts previously identified.

The significant impact of irreversibly and irretrievably committed resources has not changed since certification of the 1992 EIS/EIR and is not anticipated to change through 2002. No growth-inducing changes have occurred as a result of LLNL operations and none are anticipated. The proposed project is consistent with the analysis presented in the 1992 EIS/EIR. Although public review of an addendum is not required under provisions of CEQA, notice of the availability of the Addendum to the 1992 SEIR was published in local newspapers a few days in advance of this special meeting.

The Findings indicate that the impacts and mitigation measures have been adequately addressed in the 1992 EIS/EIR for LLNL, as amended by the Addendum to the EIS/EIR, and that use of the Addendum is an appropriate basis upon which to approve this contract, in conformance with CEQA.

Senior Vice President Kennedy recalled that Tthe Regents acted in June 1996 to authorize the President to enter negotiations to extend the three contracts expiring at the end of September. He complimented both the University and Department of Energy negotiators for their dedication and professionalism.

Regent Montoya noted that the Mayor of Berkeley received the CEQA documents with only three days' notice and would like the Regents to put off voting for 90 days. Mr. Kennedy responded that the CEQA documents were prepared as an addendum to an existing environmental impact report. The documents were prepared in accordance with all regulations, and no additional findings were reported.

(For speakers' comments, refer to the minutes of the September 18 afternoon meeting of the Committee of the Whole.)

Upon motion duly made and seconded, the Committee on Oversight of the Department of Energy Laboratories approved the President's recommendation and voted to present it to the Board.

2. **COMPENSATION FOR OVERSIGHT AND MANAGEMENT AND AUTHORIZATION TO ACCEPT OBLIGATIONS OF FUNDS FOR MAJOR CONTRACTS, DEPARTMENT OF ENERGY LABORATORIES**

The President recommended that, subject to approval by the Committee on Oversight of the Department of Energy Laboratories of the recommended extension of the Department of Energy (DOE) contracts for the operation of Los Alamos National Laboratory, Lawrence Berkeley National Laboratory, and Lawrence Livermore National Laboratory (including the certification of the respective environmental impact reports for the latter two laboratories), the Committee on Finance recommend to The Regents that:

- A. The provisions in the contracts for the annual contract administrative compensation for the University be approved for the period through September 30, 1998, and annually thereafter for the term of the contract which expires on September 30, 2002, as follows:
- (1) \$11.0 million - fixed payment of University-incurred indirect costs.
 - (2) \$14.0 million - contingency reserve/program performance fee for defrayal of unreimbursed Laboratory operating expenses and/or University-directed research and development at or for the DOE laboratories.
 - (3) \$4.5 million (subject to audit for allowability of costs actually incurred) - direct funding for the UC Laboratory Administration Office.
- B. The President be authorized to accept and the Secretary be authorized to execute modifications to the contracts for the purpose of increasing or decreasing the total amount of DOE funds obligated for all purposes under the contracts through September 30, 2002, in amounts approximating the following:
- (1) Contract W-7405-ENG-36, Los Alamos National Laboratory, a total of \$7.3 billion.
 - (2) Contract DE-AC03-76SF00098, Lawrence Berkeley National Laboratory, a total of \$1.6 billion.
 - (3) Contract W-7405-ENG-48, Lawrence Livermore National Laboratory, a total of \$5.6 billion.

Provided further that said above amounts may be increased by 25 percent, respectively, consistent with the resolution adopted by The Regents on September 20, 1968.

It was recalled that the proposed contracts provide for annual compensation to be paid to the University as described in Clauses 3.2 and 5.3 of each contract, which amounts total the funds stated in above.

Each of the current contracts for operation of the DOE laboratories at Berkeley, Livermore, and Los Alamos provides that a contract modification will be issued at least annually to make funding available for the contract and that modifications may be entered into from time to time to adjust upward or downward the total amount of funds to be made available under the contract. Under the contracts, the amount of contract funding either may be increased unilaterally by the President's acceptance of a contract modification or may be increased or decreased by a contract modification executed bilaterally by the DOE and the Secretary of The Regents.

Extension of the three laboratory management contracts necessitates Regental authorization for acceptance of obligations of funds from the DOE for each contract for the five-year term, ending September 30, 2002. The recommended authorization would allow for acceptance or execution of contract modifications up to the estimated maximum amounts (including the 25 percent potential increase provided for in The Regents' resolution of September 20, 1968) over the five-year term of the renewed contracts to cover the total anticipated amount of DOE funds obligated for all purposes under the contracts.

The proposed action would not authorize the alteration of a contract term or condition, other than by increasing or decreasing the Government's obligation of funds within the maximum approved by The Regents for each contract. The contract grants DOE the option to extend the contract for an additional five years to September 30, 2007; however, the University retains the right to terminate subject only to 18 months' notice to DOE. Consequently, the President will bring a recommendation to The Regents regarding future payments and obligations when it is anticipated that DOE might exercise that option and The Regents must consider whether to exercise its termination rights to avoid extending the contract beyond September 30, 2002.

General Counsel Holst indicated that he would distribute to all Regents a letter describing the liability provisions of the contracts.

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

The meeting adjourned at 5:30 p.m.

Attest:

Secretary