

The Regents of the University of California

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

November 15, 2000

The Committee on Oversight of the Department of Energy Laboratories met on the above date at Covell Commons, Los Angeles campus.

Members present: Regents Atkinson, Bustamante, Davies, S. Johnson, Khachigian, Leach, Miura, Montoya, and Preuss

In attendance: Regents Bagley, Fong, Hopkinson, O. Johnson, Kohn, Kozberg, Lansing, Lee, and Parsky, Regents-designate T. Davis, Morrison, and Seymour, Faculty Representatives Cowan and Viswanathan, Secretary Trivette, General Counsel Holst, Interim Treasurer Bowman, Provost King, Senior Vice Presidents Darling and Mullinix, Vice Presidents Broome and Drake, Chancellors Berdahl, Bishop, Dynes, Greenwood, and Orbach, Vice Chancellor Desrochers representing Chancellor Tomlinson-Keasey, Executive Vice Chancellor Grey representing Chancellor Vanderhoef, Laboratory Directors Browne and Tarter, and Recording Secretary Bryan

The meeting convened at 2:55 p.m. with Committee Chair Leach presiding.

1. **APPROVAL OF THE MINUTES OF THE MEETING OF JULY 19, 2000**

Upon motion duly made and seconded, the minutes of the meeting of July 19, 2000 were approved.

2. **APPROVAL OF NEGOTIATIONS WITH THE DEPARTMENT OF ENERGY FOR THE OPERATION OF LOS ALAMOS NATIONAL LABORATORY AND LAWRENCE LIVERMORE NATIONAL LABORATORY**

The President recommended that he be instructed to enter into negotiations with the Department of Energy to extend the current contracts with the Department of Energy for the continued operations of Lawrence Livermore National Laboratory and Los Alamos National Laboratory for a period not to exceed September 30, 2007.

It was recalled that the Department of Energy (DOE) contracts for the management of Los Alamos National Laboratory (LANL) and Lawrence Livermore National Laboratory (LLNL) were executed on September 18, 1997, pursuant to authorization from The Regents, and were effective October 1, 1997 through September 30, 2002. The contracts contain a DOE option to extend the University's performance to no later than September 30, 2007.

On September 17, 2000, Department of Energy Secretary Richardson directed the National Nuclear Security Administration (NNSA) to restructure the department's contracts with the University of California to address security and facility operations issues that have arisen at LANL and LLNL in the past two years. Subsequently, the University proposed a number of measures to strengthen oversight and operations at LANL and LLNL, the creation of a Vice President for Laboratory Management, and the engagement of industrial expertise by the University to assist the laboratories in improving specified operations. Given the significance of these changes and the need for consistency in the effort to make these initiatives succeed, the University's proposal is contingent upon DOE's extending the existing contracts sufficiently beyond the current expiration date of September 30, 2002.

DOE has accepted a proposal to extend the contracts to September 30, 2005. Preliminary to such an extension DOE requested that the University's proposal for improvement initiatives be incorporated into the LANL and LLNL contracts as a contract appendix and that such contract modifications be accomplished by November 15, 2000. The President, pursuant to interim authority in Standing Order 100.4 (ee), has completed modifications of the contracts to incorporate the improvement initiatives.

DOE has proposed to begin negotiations with the University on November 20, 2000 on a set of issues that must be addressed as part of an extension by DOE of the contract period to September 30, 2005. These include the following areas:

- The University's compensation for its performance under an extended contract, including the performance management fee, the University's oversight costs, and the DOE's share of systemwide indirect expenses.
- The inclusion of two new standard Department of Energy Acquisition Regulation clauses required to be in contracts with terms extending past 1999: (1) the authority of DOE to reduce the performance management fee based on significant adverse events involving the environment, public and worker safety, and security; and (2) the preparation of a plan to enhance workforce diversity at laboratory operations.

The University's objective in negotiations is to assure that sufficient financial resources are provided to enable the University to continue managing the laboratories as a public service. In this regard, new and anticipated statutory changes since the current contracts were entered into will modify the risks of unreimbursed costs and will apply to an extended contract. These include new statutory fines and penalties for security violations, mandated fee reductions for security violations, and the removal of the statutory exemption for nonprofit organizations from fines and penalties for nuclear safety violations under the Price Anderson Act.

Since 1992, the University has had a risk management strategy involving a performance management fee for operation of the laboratories, a reserve fund, currently \$20 million,

for excess and post-contract unreimbursed costs, and a right to terminate contract operations with 18 months' notice to DOE. Accordingly, the University believes that by maintaining an appropriate fee structure, obtaining a cost reimbursement agreement for the new initiatives, and making an adjustment to the indirect payments made to the University to reflect current systemwide costs, the University will retain the levels of operating cost coverage that The Regents deemed prudent in the 1992 and 1997 contract extensions. Historical levels of unreimbursed costs are well below fees paid to the University, and the University has been able to return substantial funds from the fees to the laboratories for discretionary research and to conduct complementary and beneficial research for the laboratories at University campuses.

The above matters are the minimum necessary set of issues that must be resolved as part of an extension by DOE of the contract period. DOE may propose additional contract terms that may be negotiated to the extent they support the overall objectives for the contact extension.

No action is required under the California Environmental Quality Act (CEQA), as The Regents made a CEQA determination with regard to contract operations up to September 30, 2007 as part of the 1997 action approving the contract terms for LLNL and Lawrence Berkeley National Laboratory (LBNL).

The contract for the operation of LBNL may be modified in some respects to reflect the change in contract compensation; however, DOE has not yet made a formal decision with respect to extending the LBNL contract, and it may be that no action will be taken by DOE regarding the contract term for that laboratory until later in 2001. The contracts for LANL and LLNL fall under the purview of the National Nuclear Security Administration, while the contract for LBNL is under the purview of the Office of Science within the DOE.

Committee Chair Leach noted that, in the past, the University has encountered problems with its management of the laboratories based on a lack of clearly established lines of responsibility and authority between it and the Department of Energy. This circumstance has subjected the University to criticism for lack of oversight in areas for which it was not responsible. He asked where subcontractors which the University contemplates hiring to provide industrial expertise will get their

direction. Provost King explained that subcontracting will be done only for the purpose of receiving advice and not for the actual implementation of security measures. That advice will come to both the University and the laboratories through the Office of the President.

Regent Bustamante asked about the meaning of integrated security and safeguards management. Provost King responded that the concept of integrated safety management means that the DOE would continue to direct policy but that safety and security would be the responsibility of the line management at the laboratories.

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

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

The meeting adjourned at 3:05 p.m.

Attest:

Secretary