

The Regents of the University of California

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

July 17, 2003

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

Members present: Regents Atkinson, Blum, Bodine, Davies, Marcus, Montoya, Moores, Parsky, Pattiz, and Seigler; Advisory member Binion

In attendance: Regents Hopkinson, Johnson, Kozberg, Lansing, Lee, Murray, and Sayles, Regents-designate Novack and Ornellas, Faculty Representative Pitts, Secretary Trivette, General Counsel Holst, Treasurer Russ, Provost King, Senior Vice Presidents Darling and Mullinix, Vice Presidents Broome, Gomes, and Hershman, Chancellors Berdahl, Bishop, Carnesale, Cicerone, Córdoba, Dynes, Greenwood, Tomlinson-Keasey, and Yang, and Recording Secretary Bryan

The meeting convened at 9:25 a.m. with Committee Vice Chair Blum presiding.

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

Upon motion duly made and seconded, the minutes of the meeting of May 15, 2003 were approved.

2. **UPDATE ON THE DEPARTMENT OF ENERGY LABORATORIES**

Senior Vice President Darling recalled that at the May 2003 meeting, Mr. Linton Brooks, administrator of the National Nuclear Security Administration, reported on the Secretary of Energy's decision to open to competition the contract to manage the Los Alamos National Laboratory when that contract expires in September 2005. He reviewed the reasons for the decision, praised the University and the laboratory for the management changes that had taken place since late last year, and urged the University to compete for the contract when the Request for Proposal comes out in fall 2004. Mr. Darling stated that the University faces two tasks in this regard. The first is to continue to make the management improvements that were begun last year, to sustain them over time, and to extend them into additional areas of the laboratory. The second is to prepare for making a decision regarding competing for the contract for the Los Alamos laboratory and possibly also for the Livermore National Laboratory.

Mr. Darling provided a context for the Secretary's decision and highlighted some of the developments that may influence the Regents' decision as to whether to compete. He reported that discussions are under way in Washington in both the executive branch and in Congress about how to carry out various responsibilities of the federal

government. The Bush administration seems interested in remaking the federal workforce and in identifying further opportunities to outsource federal activities to the private sector. Congress is examining how the executive branch, particularly the Department of Energy, has been overseeing the existing management contracts that are held with universities and the private sector. In these discussions, both Congress and the executive branch begin with the presumption that competition is crucial to improving contractor performance. As part of this analysis, earlier this year the Secretary of Energy established a blue ribbon commission to recommend to him criteria concerning contract renewal and competition. The commission expects to make its recommendations in the fall. He reported that he and the University's three laboratory directors, along with many other contractors, had been requested to testify before the commission on August 5.

Mr. Darling reported that Representative Hobson, from Ohio, who chairs the House Appropriations Subcommittee on Energy and Water, included some statutory language in the FY 2004 appropriations bill that directs the Secretary of Energy to open to competition all the DOE contracts that have not been opened in the last ten years. When the Subcommittee report went to the full Committee, it changed the requirement from a competition every ten years to a requirement that there be competition for only those contracts that have not been open to competition in the last fifty years, of which there are very few. If this language survives, it would cover the Livermore laboratory, but Lawrence Berkeley National Laboratory would be exempted because the announcement has been made that its current contract will be extended. The Committee directed the Secretary not to impose any conditions on contract competition that would bias the competition in favor of the incumbent contractor. Mr. Darling noted that the Committee opposed efforts by DOE to cover any costs for competition by existing contractors. Senator Domenici, of New Mexico, has expressed broad dissatisfaction with the Department of Energy's management of the nuclear and scientific laboratories. He would like DOE to define more clearly the responsibilities of the Department of Energy and of the contractors so that there is less confusion about their roles. He is concerned that conflicting edicts from different parts and different layers of DOE are contributing to the poor management of the national laboratories.

In response to a question by Committee Vice Chair Blum, Senior Vice President Darling confirmed that the recent involvement of a multitude of representatives from DOE and elsewhere with differing views has made management of the Los Alamos laboratory more difficult.

Mr. Darling reported that three former directors of the Los Alamos and Livermore laboratories have testified at the ongoing hearings, during which a consensus opinion has emerged that competition will enhance the performance of all DOE laboratories. There has been extensive discussion about the relative advantages of corporate management versus university management of the laboratories. All witnesses have agreed that universities need to be involved, but there have been differences of opinion

as to whether a university should have the contract or whether a corporation should have the contract and then bring in scientific and engineering expertise. There has been general agreement that corporations would provide better oversight of the financial and management issues that the laboratories face.

Mr. Darling reported that the Health Science Committee held a hearing to ensure that the Department of Energy's decision to open the Los Alamos and Argonne National Laboratory–West contracts to competition would not compromise the scientific excellence and mission of those laboratories.

In the House Government Reforms Committee, a hearing was held to examine broader security failures at DOE laboratories. Mr. Darling reported that extensive testimony from the General Accounting Office was highly critical of DOE's security policies and questioned the thoroughness of the Department's audits and inspection of security matters.

Senior Vice President Darling concluded his background report by remarking that, with regard to competition issues, there are many forces under way, many of them put into play by the Secretary of Energy's decision to open the Los Alamos contract to competition. It is difficult to predict the outcome of the deliberations.

Mr. Darling then turned to the University's continuing efforts to improve all aspects of laboratory management, primarily at Los Alamos but also at the other laboratories, from business practices to security. He reported that Los Alamos continues to make improvements. It has reorganized its business division and human resources office and has completed the first phase of a comprehensive property inventory, which shows that 99.6 percent of the property can be accounted for, a figure that would earn a rating of "outstanding" from the Department of Energy. There is also a business process improvement plan in place, led by Vice President Broome, that set out 132 milestones for the laboratory that should be reached by September 2004. New controls are also in place for laboratory procurement, to lessen the possibility of a recurrence of earlier problems.

Mr. Darling provided details about one of those problems, the alleged attempt by a Los Alamos laboratory employee to purchase a Ford Mustang using a corporate credit card. He reported that a thorough investigation had been completed and had found no evidence that the employee ever attempted to purchase the car. In fact, it appears that the employee was attempting to purchase transducers for the laboratory. She had sent the order by facsimile to the vendor, but the investigation showed that the fax number had been changed and actually belonged to the All Mustang company, and that an employee there defrauded the laboratory employee by pretending to be the transducer vendor and taking the credit card number. The findings of the investigation have been sent to the U.S. Attorney and to the Department of Energy Inspector General with the request that they pursue the matter.

Turning to security issues at the Lawrence Livermore National Laboratory, Mr. Darling noted that there have been three cases of missing keys reported recently. While these instances have revealed weaknesses, there is no evidence that national security has been threatened. In each instance, the laboratory leadership took quick and decisive action to minimize the vulnerabilities and to address the management problems, including naming a new head of security for the laboratory. He noted also that the laboratory has contracted with Booz-Allen & Hamilton, Inc. to review the laboratory's security management and to recommend further corrective actions to make sure that the laboratory is operating as effectively as possible.

Mr. Darling emphasized that, despite the problems of recent months, all three of the University's laboratories continue to set extremely high standards of accomplishment in science and in fulfilling their missions to the nation. He reported that 15 of the recently disclosed U.S. R&D 100 Awards were won by the three laboratories.

Committee Vice Chair Blum thanked Senior Vice President Darling and his team, particularly Vice President Broome, for their leadership during the last six months pertaining to problems at the laboratories. He noted the remarkable progress at the Los Alamos laboratory in redesigning some of its business practices and incorporating the changes.

Regent Bodine asked what sort of corporation Congress or others expect would compete for management of the Los Alamos laboratory. Mr. Darling responded that defense contractors such as Lockheed Martin, which operates Sandia Laboratory; non-profit organizations such as the Battell Memorial Institute, which manages the Pacific Northwest National, Oak Ridge, and Brookhaven laboratories; and Science Applications International Corporation were examples of possible competitors.

Regent Pattiz was concerned that the events going on in Congress did not appear to be positive for the University. Competitive bidding, negotiations, committee reports, and the regional interests of the members of Congress are just some of the factors that would be involved if the University wished to try to retain its management contract for Los Alamos. The effort would also take direct involvement by Regents who have political contacts in Washington and would be very expensive. He asked whether there had been any discussion about the sharing of responsibilities; that is, that the University could continue to work on the science, but outside contractors would provide the business and security expertise. Mr. Darling responded that initially the government's nuclear weapons laboratories were run by a mixture of universities and corporations. It has been suggested that the University could enter into a limited liability corporation joint venture with the private sector for that purpose. While it is generally acknowledged that universities bring tremendous scientific expertise and innovation and a flow of educated people to train the next generation of scientists and engineers, there is a presumption that the private sector will outperform universities in other measures, despite a record of failure in doing so, which has been at a high cost to the nation. Many people would recommend that the University of California join

with the private sector as a limited liability corporation, an arrangement the University would accept only if it were the dominant partner. The mission of the laboratories is not to perform business effectively but rather to achieve national security goals, which are driven by science and engineering.

Regent-designate Ornellas requested details about the cost of competing for the contract. Mr. Darling recalled that Ambassador Brooks had mentioned that, since the University operates the laboratories on a no loss - no gain principle, it has never taken a fee with which to garner a profit or amass a reserve. The remainder of the fee after covering costs is reinvested in additional science. It would not be appropriate for the University to siphon money from its educational effort to pay for competing for the contract. Mr. Brooks had indicated that he thought there might be a way to pay for the competition using the University's laboratory management fee, but that possibility seems remote, given the attitudes in Washington.

President Atkinson remarked that, although the newspapers had thrashed the University for the alleged use of a procurement card to purchase a Mustang and for other perceived infractions, all the stories had turned out to be unfounded. Unfortunately, they would be what people remember in the future, rather than the impressive works of the laboratory. Mr. Darling noted that after reviewing \$400 million in purchase card transactions at Los Alamos, the University found \$3,500 in questionable costs. The employees responsible were terminated and restitution is being pursued.

Vice Chair Blum elaborated, emphasizing that the University launched a detailed and expensive investigation, the result of which was the discovery of a minuscule amount of fraud. Based on the fact that little or no fraud has been found, that the business practices in question have been reformed, and that the science continues to be highly rated, he had concluded that the only reason the University was being asked to compete for the contract was political. He noted that the history of fraud, overruns, and mismanagement in the nation's aerospace industry suggested that the best managers for the Los Alamos laboratory may not be found in the private sector.

Regent Pattiz commented that the University has for many years provided a valuable service to the government through its management of the laboratories. He asked whether there were other institutions likely to be capable of doing the job, willing to be subjected to constant scrutiny and the vicissitudes of politics, and content to operate without a profit. Mr. Darling believed that some of the contractors mentioned earlier were exploring the opportunity, along with several universities. He noted, however, that any of these could cost the government more than the University has. Because of its exceptional management, neither the University, its employees, nor the federal government has had to contribute to the pension program in over ten years. The savings to the federal government alone of not having to make those employer payments exceed \$1 billion. One of the other educational institutes that have expressed an interest, the public university system of another state, does not come

close to having the number of members of the National Academy of Science found on the UC Berkeley campus alone. The fact that the University has managed the laboratory without financial gain has given it the independence to put the nation's interests first without any regard for the effect on the University. He did not believe another contractor would provide that level of integrity. Also, the laboratory's scientists and engineers are fervently in favor of continuing the relationship. Moreover, only a limited number of people, most of whom are close to retirement, are qualified to mentor the young scientists and engineers who will take over the leadership in the field of nuclear weapons testing and safety. These facts are being presented to committee chairs, members of Congress, the Department of Energy, and others individually and in the public arena.

President Atkinson emphasized the fact that any money left over after the University recovers its costs is returned to the laboratory to conduct innovative research. The research programs of the laboratories have produced some of the most important work that has been done in the areas of biological and anti-nuclear terrorism as a direct result of that reinvestment. He pointed out that the University has always given the children of staff and scientists who work at the Los Alamos laboratory access to the University of California as in-state residents. The University has considered its involvement with the laboratories as a service to the federal government.

Chairman Moores recalled that, when issues at the Los Alamos laboratory first came to light, the media had suggested that fraud in excess of \$100 million would be found. The \$4,000 in procurement card expenditures was part of \$14,500 of questionable expenditures the audit found for all laboratory procurement. In light of these findings, Chairman Moores believed that the University had done a job that any Fortune 500 company would be happy to report to its shareholders and that it was being held to unreasonably high standards. The fact that the business practices at the Los Alamos laboratory had been found to be less than optimal and still the losses were insignificant was a testament to the high quality and honesty of the University's laboratory employees. He suggested that the accounting profession might have a standard for acceptable levels of loss that could be cited in the University's defense. Mr. Darling responded that when public funds are involved, any loss is unacceptable, but he agreed that such a standard is impossible to attain. He reported that the University is working with DOE jointly to adopt external standards that are widely known among organizations of all types so as to have a guide for assessing performance. The University is assembling a statement that will review the initial allegations and what was found so that a comprehensive summary of the facts may be disseminated to the public.

Regent Davies pointed out that, notwithstanding all the discussion about competing alone or with a partner in some form, it was important to make clear that no decision to compete has yet been made and that one cannot be made until the terms of the RFP have been disclosed. He believed that the public policy decision makers should be worried about losing the University of California and not the reverse.

Senior Vice President Darling reported that these issues would be discussed again at future meetings and information would be prepared to help the Regents decide whether the University should compete for the contract.

The meeting adjourned at 10:13 a.m.

Attest:

Secretary