

The Regents of the University of California

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

May 25, 2005

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

Members present: Regents Blum, Dynes, Marcus, Ornellas, Parsky, Pattiz, Preuss, and Ruiz; Advisory members Rosenthal and Brunk

In attendance: Regents Anderson, Bustamante, Kozberg, and Lee, Regents-designate Juline and Rominger, Faculty Representative Blumenthal, Secretary Trivette, General Counsel Holst, Treasurer Russ, Senior Vice Presidents Darling and Mullinix, Vice Presidents Broome, Foley, and Hershman, Chancellors Birgeneau, Carnesale, Córdova, Denton, Fox, Tomlinson-Keasey, Vanderhoef, and Yang, University Auditor Reed, and Recording Secretary Bryan

The meeting convened at 11:50 a.m. with Committee Chair Preuss presiding.

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

Upon motion duly made and seconded, the minutes of the meeting of March 16, 2005 were approved.

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

Vice President Foley recalled that the new management and operating contract for Lawrence Berkeley National Laboratory had been awarded to the University on April 19, 2005. The transition period has commenced in anticipation of the June 1 start up under the new contract.

Mr. Foley reported that the transition activities are going smoothly. They involve identifying the few changes in the new contract, preparing and implementing plans, informing employees about operational changes, and informing vendors about the change in contract numbers. The Department of Energy (DOE) has appointed a new site manager at Berkeley, Ms. Aundra Richards, with whom the University has an established, positive working relationship.

Vice President Foley commended Director Chu and his management team for their work on the proposal and the relationship they have had with the DOE over the years, which he believed had contributed to their success in securing the contract renewal.

Mr. Foley reported that the University is working with the contracting officer at Lawrence Livermore National Laboratory on some changes to the contract to conform to revisions in the DOE/National Nuclear Security Administration policy and to extend that contract for an additional two years. The extension request is expected to be proposed to The Regents at the July meeting. Although no issues with the extension are anticipated, it was his intention to keep the Board informed.

3. **APPROVAL OF CERTAIN CONTRACT MODIFICATION AUTHORITY FOR CONTRACT DE-AC02-05CH11231 AWARDED APRIL 19, 2005 FOR THE OPERATION OF LAWRENCE BERKELEY NATIONAL LABORATORY**

The President recommended that the Committee on Oversight of the Department of Energy Laboratories recommend to The Regents that:

- A. The President be authorized to take such actions as may be required to incorporate into contract DE-AC02-05CH11231 for the management and operation of the Lawrence Berkeley National Laboratory, awarded on April 19, 2005, proposal elements accepted by the Department of Energy but not yet reflected in the awarded contract.
- B. The President be authorized, as part of contract administration, to enter into or amend agreements incorporated by reference into the contract, including, but not limited to, appendices, schedules, reimbursement authorizations, and multi-party agreements, provided that the General Counsel has determined that such agreements are consistent with the terms of the prime contract authorized by The Regents.

It was recalled that on January 20, 2005 The Regents authorized the President to respond to a Request for Proposal (RFP) that resulted in the award of a new prime contract (DE-AC02-05CH11231) for the management and operation of Lawrence Berkeley National Laboratory (LBNL). Management and operations of the Laboratory will be transferred to that contract on June 1, 2005.

In responding to the RFP, the University accepted the terms of the pro forma contract included in the RFP but was requested also to submit proposals associated with cost, transition, and other matters. The Department of Energy accepted the University's proposal, including certain elements that DOE and the University agree should be reflected in the contract. Examples include reimbursement of University indirect costs, recharges for participation in insurance programs, elimination of inapplicable terms, and other advanced understandings of allowable costs. The contract amendments contemplated are limited to assuring that the contract accurately reflects the proposal made with The Regents' approval. Any proposed contract change other than that made to incorporate the University's proposal will be brought to The Regents for approval, in accordance with Standing Order 100.4(dd)(2).

As part of contract administration, there are a variety of documents and sub-agreements that The Regents has authorized the President to execute in the previous contract. Examples include contract appendices, contract schedules, and multi-party agreements such as the banking agreement for the modified letter of credit that funds contract operations. In the prior negotiated contract approved by The Regents, the President's contract administration authority was set forth as a contract provision. Due to the use in this solicitation of standard federal contract forms, the contract provision from the old contract is not in the new contract document. Accordingly, it is requested that The Regents extend this authority as a separate matter independent of its January 20, 2005 authorization to enter into the contract. The General Counsel will be consulted on such agreements to ensure that they can be executed consistent with the prime contract terms that The Regents has approved.

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

4. **APPROVAL OF CONTRACT CLOSEOUT AUTHORITY FOR CONTRACT DE-AC03-76SF00098 FOR THE OPERATION OF LAWRENCE BERKELEY NATIONAL LABORATORY BETWEEN OCTOBER 1, 1982 AND MAY 31, 2005**

The President recommended that the Committee on Oversight of the Department of Energy Laboratories recommend to The Regents that the President be authorized to take such actions as may be required to perform a termination of contract DE-AC03-76SF00098 for the management and operation of the Lawrence Berkeley National Laboratory between October 1, 1982 and May 31, 2005, including but not limited to execution of amendments and revisions of the contract during closeout and entering into final settlements of any outstanding claims by or against the University.

It was recalled that the contract (DE-AC03-76SF00098) for the management and operation of Lawrence Berkeley National Laboratory (LBNL) is set to expire on May 31, 2005. A new prime contract (DE-AC02-05CH11231) was awarded to the University on April 19, 2005. Management and operations of the Laboratory will be transferred to that contract on June 1, 2005.

The current LBNL contract dates back to October 1, 1982. Prior to that date, LBNL and Lawrence Livermore National Laboratory operated under a single contract, W-7405-ENG-48. Effective June 1, 2005 the current contract will enter a termination phase, or contract close-out, which will continue to be funded by the federal government until there is a final accounting and settlement. The close-out activities will be limited to LBNL operations since 1982; any claims arising from activities prior to 1982 fall under the purview of contract W-7405-ENG-48.

During a contract closeout, the government and the contractor conduct a final accounting of costs incurred, equipment, subcontracts, intellectual property, and outstanding litigation and claims. Many of these matters will be resolved through transferring

obligations from the old to the new contract; however, there will be some continued administration that will necessitate that the old contract remain active until a final settlement is reached. The authority sought will aid in the timely administration of closeout activities for whatever period of time that may be. The initial amendment to the old contract will involve substituting a closeout scope of work for the existing management and operations scope of work in the contract.

In general, costs of closeout are reimbursable by the federal government. Any federally unreimbursable costs incurred or identified during closeout will be paid for from the Post Contract Contingency Fund established for the three national laboratory contracts (DE-AC03-76SF00098, W-7405-ENG-48, and W-7405-ENG-36) and, if necessary, from current fees earned under the new LBNL contract.

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 11:54 a.m.

Attest:

Secretary