

The Regents of the University of California

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

July 21, 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, Juline, Marcus, Moores, Parsky, Pattiz, Preuss, Rominger, and Ruiz; Advisory member Brunk

In attendance: Regents Hopkinson, Island, Johnson, Kozberg, Lansing, Lee, Lozano, Rosenthal, and Wachter, Regents-designate Coombs, Ledesma, and Schreiner, Faculty Representative Blumenthal, Secretary Trivette, General Counsel Holst, Provost Greenwood, Senior Vice Presidents Darling and Mullinix, Vice Presidents Broome, Foley, Gomes, and Hershman, Chancellors Birgeneau, Bishop, Carnesale, Denton, Drake, Fox, Tomlinson-Keasey, Vanderhoef, and Yang, and Recording Secretary Bryan

The meeting convened at 9:35 a.m. with Committee Chair Pattiz presiding.

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

Upon motion duly made and seconded, the minutes of the meeting of May 25, 2005 were approved.

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

Vice President Foley reported that the transition to the new management contract for the Lawrence Berkeley National Laboratory was completed on June 1 and that the proposal for the contract to manage the Los Alamos National Laboratory had been submitted to the Department of Energy on behalf of the University and Bechtel National, Inc. team. Although he could not speak publicly about its content, he expressed his satisfaction with the quality of the University's proposal, which had been developed under the leadership of Laboratory Director Anastasio and through the efforts of Bechtel, the Washington Group, the Office of the President, and Los Alamos laboratory administration. He believed that the University-Bechtel proposal was the best proposal the government would receive. The Department of Energy and National Nuclear Security Administration will begin their reviews, with oral testimony scheduled for the week of August 29. A group of key administrators led by Interim Director Anastasio will demonstrate to the Source Evaluation Board their understanding of the Los Alamos laboratory and will explain how the elements of the University's proposal would be applied to various scenarios that will be presented to the team during the meeting. In this way the Source

Evaluation Board may get a sense of the quality of the University's management team compared with the competition. Following the oral presentation, the Source Evaluation Board will score the competing proposals, weighing science and technology most heavily. The Source Evaluation Board will then make a recommendation to the Source Selection Official, who will select a winner. The outcome is expected to be announced in early December. The winner will have six months to make the transition to managing the Los Alamos laboratory.

Regent Blum asked if it would be possible to track the evaluation process so as to determine whether the University is being treated fairly. Vice President Foley responded that it would not be possible, as contact with anyone having to do with the proposal could mean disqualification for the applicant. Although the candidates may be given the opportunity of a post-competition review of how their team scored, the choice of the reviewers will be final. Unless there were some blatant misconduct that merits protest, the applicants must accept the final decision.

Chairman Parsky, who had been involved in the preparation of the proposal, expressed confidence that the University had submitted a very competitive bid.

3. **AUTHORIZATION TO EXECUTE MODIFICATION TO THE DEPARTMENT OF ENERGY CONTRACT FOR THE LAWRENCE LIVERMORE NATIONAL LABORATORY TO EXTEND THE TERM AND TO AMEND CLAUSES AS A RESULT OF CHANGES TO THE FEDERAL ACQUISITION REGULATIONS AND THE DEPARTMENT OF ENERGY ACQUISITION REGULATIONS**

The President recommended that he be authorized to:

- A. Execute a modification to the provisions of contract W-7405-ENG-48 in order to incorporate revisions to the clauses indicated below.
- B. Extend the term of contract W-7405-ENG-48 up to and including September 30, 2007.
- C. Agree on revised financial terms for costs and fees associated with the extended period, with the concurrence of the Chair of the Committee on Oversight and the Chair of the Committee on Finance.

Summary of Updates to Existing W-7405-ENG-48 Clauses

H.014 - Program Performance Fee

Amend to reflect fees for two-year extension period

H.026 - Advance Understanding of Costs and Expenses

Amend to reflect reimbursed costs for two-year extension period.

- H.027 - Advance Understanding on Human Resources
Correct typo.
- H.031 - Lobbying Restriction (Energy and Water Development Appropriations Act, 2001)
Date and title change.
- H.032 - Lobbying Restriction (Department of Interior and Related Agencies Appropriations Act, 2001)
Date and title change.
- I.007 - 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Jun 1997)
Date and title change and minor text change.
- I.009 - 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Jul 1995)
Date change and minor text change.
- I.019 - 52.222-26 Equal Opportunity (Feb 1999)
Correction of threshold error.
- I.028 - 52.225-9 Buy American Act - Construction Materials (Jun 2003)
Date change and minor text change.
- I.029 - 52.225-13 Restrictions on Certain Foreign Purchases (Mar 2005)
Update of website address.
- I.032 - 52.230-6 Administration of Cost Accounting Standards (Apr 2005)
Date change and rewrite.
- I.039 - 52.244-6 Subcontracts for Commercial Items (May 2004)
Date change and adds flow down of notification of employee rights (new clause I.107).
- I.048 - 952.202-1 Definitions (Dec 2001) (Deviation)
Date change and deletes some language.
- I.061 - 952.251-70 Contractor Employee Travel Discounts (Jun 1995)
Date change and text changes.
- I.062 - 970.5203-1 Management Controls (Dec 2000)
Deviation add annual reporting requirement.
- I.082 - 970.5227-4 Authorization and Consent (Dec 2000)
Date change and threshold increase.
- I.083 - 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2000)
Date change and threshold increase.
- I.085 - 970.5227-8 Refund of Royalties (Dec 2000) (Deviation)
Date change and text change.
- I.086 - 970.5227-10 Patent Rights - Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor (Dec 2000) Alternate I (Dec 2000)
Date change and minor text change.
- I.092 - 970.5232-2 Accounts, Records, and Inspection (Dec 2000) Alternate II (Dec 2000)
Deviation text added to reflect Internal Audit Implementation Design.
- F.002 - Period of Performance (May 1996)
Changed to reflect extension to September 30, 2007.

New Clauses for Inclusion in W-7405-ENG-48

- H.035 - Implementation of Performance Improvement And Collaboration With The Los Alamos National Laboratory Successor Contractor
Statement of cooperation.
- I.107 - 52.222-39 Notification Of Employee Rights Concerning Payment Of Union Dues or Fees (Dec 2004)
New standard clause.
- I.108 - 970.5217-1 Work For Others Program (Non-DoE Funded Work) (Jan 2005)
Replaces DOE directive 481.1

The table of contents for the LLNL contract will be revised to reflect these changes.

It was recalled that the future management and operating contract for the Lawrence Livermore National Laboratory (LLNL) will be competitively awarded, as required by Section 301 of the Energy and Water Appropriations Act for Fiscal Year 2004. The schedule for that competition is not yet established, but it will not be completed prior to September 30, 2007. Accordingly, the Secretary of Energy has authorized the Administrator of the National Nuclear Security Administration (NNSA) to extend noncompetitively the existing contract with the University to that date.

The President recommends that the University agree to extend the contract term to meet the needs of the federal government; however, negotiations regarding the fees and other costs to be paid to the University for contract performance during the extended period remain incomplete. It is not the University's objective to seek an increase in the total compensation paid to the University, but recent Inspector General reports have criticized past agreements between the NNSA and the University regarding indirect cost compensation. Accordingly, the University and the NNSA are reviewing these arrangements and have yet to conclude the best arrangement for maintaining total compensation for contract performance. The President seeks authority to amend the fee and cost terms as appropriate upon conclusion of these negotiations, with the concurrence of the Chair of the Committee on Oversight of the Department of Energy Laboratories and the Chair of the Committee on Finance.

In addition to extending the contract term and amending the fee and cost provisions, changes are necessary to reflect updates to the Federal Acquisition Regulations and the Department of Energy Acquisition Regulations. University and DOE review has indicated the need to make corrections and clarifications to the contract clauses, including adding three new clauses. The proposed clause changes reflect the most accurate and up-to-date language agreed to between the parties. The listing of clauses to be added or amended is included on the attachment.

Vice President Foley observed that the recommendation includes an agreement to revise certain financial terms. The University receives \$15 million per year, composed of performance, management fee, indirect cost payments, and reimbursement for laboratory

management office expenses, to manage the Livermore laboratory. A DOE Inspector General report earlier this year criticized the DOE over the agreement that it entered into in 2002 with the University concerning the allocation of indirect costs chargeable to the three laboratory management contracts. As a consequence, discussions continue with the DOE and NNSA on what the rates are appropriate for the Livermore laboratory over the next two years. Mr. Foley believed the negotiations would be resolved in the University's favor. The Chairs of this Committee and the Committee on Finance will be informed with respect to any final agreement.

Regent Lee believed that the University should be entitled to profit from its management of the DOE laboratories similarly to any for-profit company that might accept the job. The money could be used to offset student fee increases. President Dynes noted that the University operates the laboratories in the interest of national security and the advancement of science. After unallowable costs and the University's expenses are subtracted, the remainder of the management fee it receives is returned to the Laboratory Directors in order to advance new research programs.

[For speakers' comments, refer to the minutes of the July 21, 2005 meeting of the Committee of the Whole.]

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 9:50 a.m.

Attest:

Secretary