

The Regents of the University of California

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

March 15, 2006

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

Members present: Regents Blum, Dynes, Juline, Marcus, Moores, Parsky, Pattiz, Preuss, Rominger, and Ruiz

In attendance: Regents Gould, Hopkinson, Island, Johnson, Kozberg, Lansing, Rosenthal, Schilling, and Wachter, Regents-designate Coombs, Ledesma, and Schreiner, Faculty Representative Oakley, Secretary Trivette, General Counsel Holst, Interim Treasurer Berggren, Acting Provost Hume, Senior Vice Presidents Darling and Mullinix, Vice Presidents Foley, Gomes, Gurtner, and Hershman, Chancellors Birgeneau, Bishop, Carnesale, Córdova, Drake, Fox, Tomlinson-Keasey, and Vanderhoef, Laboratory Director Anastasio, Acting Laboratory Director Kuckuck, University Auditor Reed, and Recording Secretary Bryan

The meeting convened at 9:50 a.m. with Committee Chair Pattiz presiding.

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

Vice President Foley reported that at Los Alamos National Laboratory the transition between the University's management and management by the Los Alamos National Security, LLC is developing smoothly. The University's focus is to meet its ongoing obligations under the contract and to support the National Nuclear Security Administration through the end of the contract on May 31. As expected, preparing to transfer employment of the laboratory staff from the University to LANS is challenging. Long-term career employees are concerned about their future at Los Alamos. The employment offers by LANS are being made to the staff, and the University is in the process of notifying formally incumbent employees of their separation of employment with the University on the contract expiration date. The University is working collaboratively with LANS and the NNSA to make continued employment at the laboratory attractive. The average laboratory employee is becoming more comfortable with the impending change. There continues to be anxiety regarding the status of LANL's retirees and the University of California retirement program. Unfortunately, action taken by The Regents in January was not well understood by the LANL employees and retirees. He noted two requirements to which the University is firmly committed: UC retirees from LANL will receive defined benefits identical to those provided under the existing UCRP provisions, including annual cost-of-living allowances, and there will be no reduction in accrued benefits or payments; The Regents will continue to oversee

the retirement program and set investment policy. The campaign continues to communicate these facts to the interested parties.

Mr. Foley reported that the employees and retirees at Lawrence Livermore National Laboratory are monitoring developments at the Los Alamos laboratory. It is believed generally that the provisions in the Livermore request for proposal will be identical to those for the Los Alamos laboratory. No draft RFP has been disclosed for Livermore, however. As reported earlier, the Livermore competition website is active, and although NNSA has yet to announce a competition schedule, a draft proposal is expected in April. A final proposal submission could be requested as early as mid-August, which is a compressed time frame. Consistent with the authorization of The Regents in January 2004 relating to all three laboratory competitions, the University has expressed interest formally in the competition and is preparing for it. There have been about 12 entities that have expressed interest publically in competing for the Livermore contract. There may be others who have not disclosed the fact. Should The Regents so authorize, the University will be prepared to compete against whoever responds to the RFP.

Mr. Foley concluded by commenting briefly concerning the Lawrence Berkeley National Laboratory. He reported that the last few months have seen both triumphs and disappointments. There has been a spike in negative safety statistics which resulted in pointed remarks to the University in a letter from the Director of the Office of Science. Similar letters were sent to all Office of Science laboratories generally informing them of the Department of Energy's expectations with respect to operational safety. Laboratory management, in coordination with the Office of the President, responded aggressively, first through safety peer reviews involving subject matter experts drawn from academia, industry, and other DOE laboratories, and second through a laboratory management review of internal resource allocations. Personnel changes resulted. These actions were outlined by Chairman Parsky in a letter to the Department of Energy on February 7 and were received favorably. On the positive side, Lawrence Berkeley National Laboratory received an overall rating for fiscal year 2005 of "Outstanding." Notable achievements are reflected on progress on the Molecular Foundry, the Advanced Light Source Top-Off Upgrade, advances in carbon sequestration research, upgrades in the Supercomputer Center, and numerous others. In addition, DOE cited "enormous improvements in financial controls." Some of this is the result of the transfer of a Chief Financial Officer from the Livermore laboratory. There were also notable achievements in project and construction management, property management, and human resources. He believed that Director Chu and his staff were to be commended, particularly for their responsiveness to the safety issues.

Regent Juline asked that the February 7th letter from Chairman Parsky be distributed to the Committee.

Regent Blum asked for a view of building requests for the Berkeley laboratory. Senior Vice President Mullinix responded that the Office of the President was working with Director Chu to review funding alternatives for their proposals.

Chairman Parsky commented that inherent in the decision to bid for the Livermore contract was the affirmation that the quality of the people who would participate would match the quality of the Los Alamos team.

2. **AUTHORIZATION TO APPROVE AND EXECUTE MODIFICATION TO THE DEPARTMENT OF ENERGY CONTRACT FOR LOS ALAMOS NATIONAL LABORATORY TO AMEND CLAUSES AND APPROVAL OF CONTRACT CLOSEOUT AUTHORITY FOR CONTRACT W-7405-ENG-36 FOR THE OPERATION OF LOS ALAMOS NATIONAL LABORATORY BETWEEN JANUARY 1, 1943 AND MAY 31, 2006**

The President recommended that:

- A. The President be authorized to execute a modification to the provisions of Los Alamos National Laboratory contract W-7405-ENG-36 in order to incorporate revisions to clauses.
- B. The President be authorized to take such actions as may be required to perform a termination of contract W-7405-ENG-36 for the management and operation of the Los Alamos National Laboratory between January 1, 1943 and May 31, 2006, including but not limited to execution of amendments and revisions of the contract during closeout, agreements to transfer obligations, and entering into final settlements of any outstanding claims by or against the University provided, however, nothing in this action authorizes the President to make any changes to the University of California retirement program.

It was recalled that as the current Los Alamos National Laboratory contract W-7405-ENG-36 expires May 31, 2006, the financial terms require adjusting to reflect the eight-month period of the contract for FY2006, October 1, 2005 through May 31, 2006. The affected terms are clause H.014 Program Performance Fee and clause H.026 Advance Understanding of Costs and Expenses.

The National Nuclear Security Administration and the University of California agreed to a simplified approach for evaluating performance and determining the fee for the extension period of October 1, 2005 through May 31, 2006, and have modified Appendix F accordingly. As a result, the base fee has been set at \$5.8 million, and the fee at risk and increments of fee associated with specific performances levels will be deleted.

The reimbursement of costs for the oversight operations of the Vice President for Laboratory Management will be adjusted to 8/12 of the annual amount, which equals \$2,502,667.

The fixed payment for indirect costs allocable to the Los Alamos National Laboratory prime contract will be adjusted to 8/12 of the revised indirect cost proposal, which equals \$3,336,419.

The Contracting Officer for the Los Alamos Area Office concurs with the above changes.

A new prime contract (No. DE-AC52-06NA25396) was awarded to Los Alamos National Security, LLC (LANS) on December 21, 2005 and management and operations of LANL will be transferred to that contract on June 1, 2006.

Effective June 1, 2006 the current contract will enter a termination phase, or contract closeout, 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 LANL operations since 1943.

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 University's contract to the new contract between the NNSA and LANS; 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 will require. 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 contracts.

Regent Juline noted that there were unfunded pension and healthcare issues associated with the Los Alamos close out. Director of Contracts Nelson informed him that the existing contracts provide financial protection for the University, which provides financial protection for the employees. The purpose of the close out is to move into implementing the details related to such issues. Senior Vice President Mullinix commented that under the terms of the RFP and the contract, annuitant health, the principal healthcare liability, will be a liability of LANS.

Regent Juline noted that costs of the closeout are reimbursable by the federal government. He believed that the accounting for probable and estimable costs should be recognized immediately; the Committee should receive a report on any such unreimbursable costs as they become known. Director Nelson recalled that The Regents approved the creation of a contingency fund in 1992, which is the source for these reimbursable costs. The

information will be reported as the events occur. It could be several years before a final financial settlement is entered into.

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

3. **ADOPTION OF REGENTS' POLICY ON APPOINTMENTS OF INDIVIDUALS TO THE LOS ALAMOS NATIONAL SECURITY, LLC EXECUTIVE COMMITTEE OF THE BOARD OF GOVERNORS, LOS ALAMOS NATIONAL LABORATORY**

The President recommended that the following policy on appointments to the Board of Governors of Los Alamos National Security, LLC be adopted:

- A. When a vacancy occurs or is imminent with respect to a University position on the Board of Governors of Los Alamos National Security, LLC, the Chairman and the President will identify one or more candidates for appointment to such position, along with any proposed terms or conditions of the appointment. Candidates may be drawn from the ranks of Regents, University officers and senior managers, or others having expertise and experience pertinent to the management and operation of the Department of Energy National Laboratories. The President will confer with appropriate organizations within the University regarding the identification of candidates and applicable terms and conditions of the appointment.
- B. Following such consideration, the Chairman and the President will recommend the selected candidate to The Regents through the Committee on Oversight of the Department of Energy Laboratories for consideration and approval.

It was recalled that as of June 1, 2006, Los Alamos National Laboratory (LANL) will be managed and operated by the public-private partnership known as Los Alamos National Security, LLC (LANS). LANS is a limited liability company formed by the University, Bechtel National, Inc., BWX Technologies, Inc., and Washington Group International, Inc., which are referred to as the Members of the company. LANS was formed for the sole purpose of competing for and implementing the LANL contract. LANS won the competition and was awarded the contract on December 21, 2005. Following a five-month transition period, LANS will assume full responsibility for LANL on June 1.

An LLC Agreement between the four LANS Members establishes a Board of Governors that is charged with oversight and governance of the company. The Board includes three individuals appointed by the University and three individuals appointed by Bechtel, as well as five independent Governors who are selected for their expertise and experience in fields pertinent to LANL operations.

The Board includes an Executive Committee that consists of the six University and Bechtel appointees. The University is free to fill its three designated positions on the Executive Committee through such procedures and under such conditions as it chooses. The current University Governors were appointed pursuant to the general authority granted by The Regents to form a team with Bechtel and enter the competition for the Los Alamos contract. The proposed policy is intended to regularize the procedure for filling subsequent UC vacancies on the Board of Governors.

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 10:15 a.m.

Attest:

Secretary