

The Regents of the University of California

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

July 19, 2007

The Committee on Oversight of the Department of Energy Laboratories met on the above date at University Center, Santa Barbara campus.

Members present: Regents Blum, Bugay, Dynes, Marcus, Moores, Parsky, and Varner; Advisory member Oakley

In attendance: Regents Allen, Brewer, De La Peña, Garamendi, Gould, Hopkinson, Island, Lansing, Lozano, Ruiz, and Wachter, Regents-designate Cole, Scorza, and Shewmake, Faculty Representative Brown, Secretary and Chief of Staff Griffiths, Associate Secretary Shaw, General Counsel Robinson, Chief Investment Officer Berggren, Provost Hume, Executive Vice Presidents Darling and Lapp, Vice Presidents Foley and Sakaki, Assistant Vice President Casey representing Acting Vice President Standiford, Chancellors Birgeneau, Drake, Fox, Kang, Vanderhoef, and Yang, Acting Chancellors Abrams, Blumenthal, and Grey, University Auditor Reed, and Recording Secretary Bryan

The meeting convened at 10:55 a.m. with Regent Moores presiding.

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

Upon motion duly made and seconded, the minutes of the meeting of May 17, 2007 were approved.

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

Vice President Foley reported the July 13, 2007 announcement by the Department of Energy that it intends to impose a civil fine for a security violation at the Los Alamos National Laboratory (LANL) on the University of California in the amount of \$3 million, and on the Los Alamos National Security, LLC (LANS) in the amount of \$300,000. The fines are associated with a security incident at LANL in October 2006 when a non-UC subcontractor employee, Ms. Jessica Quintana, improperly removed classified materials from the laboratory for the purpose of catching up on her work at home. Mr. Foley stated that this was an unacceptable breach of security and counter to the training she received at the laboratory regarding rules for controlling classified materials. Ms. Quintana pled guilty in May 2007 to negligent handling of classified documents, which is a misdemeanor. It is reported that under an agreement with federal prosecutors, Ms. Quintana will serve up to one year in prison, pay a maximum fine of \$100,000, and face one year of supervised release. Alternatively she could be

sentenced to five years of probation. A sentencing date had not been set at the time. Although the event occurred after the University ceased its operation of the laboratory on May 31, 2006, the Department of Energy has concluded that there were violations under the University's management prior to that date that are the basis for the fine. Mr. Foley explained that this is the first fine ever assessed under a provision of law that was passed just a few years ago, and the rules associated with the law were not adopted until 2005. The actions of the University, the Department of Energy, and the National Nuclear Security Administration are potentially precedent-setting for the standards to be used for future actions. The General Counsel will be providing counsel to The Regents regarding the process and alternatives. This is the first stage in determining what, if any, civil fine the University must pay. In the event the University must pay a civil fine, it will come from the Post Contract Claims Reserve Fund, estimated to stand at \$10 million, created from fees earned at LANL and other UC-managed DOE laboratories between 1992 and 2006. If LANL pays a civil fine, those funds would come from fees, which would reduce the income payable to the owners of the corporation, including the University.

Regent Moores inquired as to the processes in place to insure that a portable thumb drive, such as the one used in the incident, will not enter the premises in the future. Regent Parsky stated that a significant number of security steps have been taken by the current Board of LANS, including the establishment of a separate security group and actions to secure identified deficiencies. The Department of Energy has indicated to the Board of LANS its belief that positive steps have been taken regarding security at LANL. Executive Vice President Darling added that several specific security measures have been taken at LANL: (1) all USB ports on the computers in the vault-type classified rooms have been sealed to prevent downloading information onto thumb drives; (2) the rooms that contain classified information are being consolidated and reduced to a more easily managed number to insure proper supervision; (3) greater control of access is being exerted to and from the rooms; and (4) random and non-random searches and drug testing are being conducted with laboratory employees.

Regent Garamendi asked who would be blamed if such a situation occurred again. Regent Parsky responded that the limited liability company (LLC), of which the University is a member, would be the responsible party. He added that the University is protected by the establishment of the LLC.

Regent Hopkinson stated that, despite the structure of the LLC, the University has a clear obligation as a joint venture partner, and from a public and federal standpoint, there is a reliance on the University for its responsible participation in the joint venture. Any violation would certainly be attributed to the University, as well as to the joint venture. She inquired as to whether the University would have a financial obligation in the event that the financial resources of the LLC were depleted. General Counsel Robinson responded that this is a risk.

Mr. Foley also reported on recent announcements. The University did not make the short list for sites that would be considered for the National Bio and Agro-Defense Facility. UC Davis, supported by LLNL, proposed that Site 300 be used for this facility. The reason given for not choosing UC's proposal was that additional agreements between Homeland Security and the Department of Energy would have to be made, while other proposals would not have required such agreements. The other issue was the opposition from the City of Tracy.

The *R&D Magazine's* 100 Awards were announced, and the three University of California Department of Energy laboratories were awarded a total of 10 awards – 5 at LLNL, 3 at LBNL, and 2 at LANL.

The partnership between the LBNL, Sandia National Laboratory, LLNL, UC Berkeley, UC Davis, and Stanford University was selected to host one of the three Bioenergy Research Centers. The University is expected to receive funding in the amount of approximately \$125 million over the next five years. The research conducted at the Center will concentrate on liquid biofuels derived from the solar energy stored in plant biomass.

The National Science Foundation has also announced the selection of UC Berkeley and LBNL for their proposal to establish two facilities, at 4800 feet and 7400 feet below sea level, in a former gold mine of the Black Hills of South Dakota. The focus of the deep underground science is the study of neutrinos and other astrophysical phenomena that can only be studied in a facility shielded from cosmic rays and other background radiation.

Mr. Foley concluded that these recent events underscore the challenges of laboratory management and the important role the University plays in providing scientific leadership at the national level.

The LLNL transition is in its final phase and is scheduled to be completed by September 30, 2007. Approximately 8000 employees have been sent letters inquiring as to whether they want to continue their employment under the new contract. Mr. Foley lauded the performance of Associate Vice President Boyette and her team in overseeing the transition.

3. **UPDATE ON BOARD OF GOVERNORS ACTIVITIES FOR LOS ALAMOS NATIONAL SECURITY, LLC (LANS), AND LAWRENCE LIVERMORE NATIONAL SECURITY, LLC (LLNS)**

Regent Parsky stated that the University of California has a continuous and ongoing responsibility with respect to the Los Alamos National Laboratory (LANL) and the Lawrence Livermore National Laboratory (LLNL), the underlying basis of which is to engage in science.

With respect to LANL, Regent Parsky reported that regular quarterly meetings have been held for the Board of the Los Alamos National Security, LLC (LANS),

at which discussions take place with the Department of Energy (DOE) regarding the science and research conducted at the laboratory. He reported that improving relations with New Mexico's environmental department is a priority at LANL. A new environmental manager with substantial DOE complex experience has been hired. There is a tradition of heavy community involvement with and support from UC-managed laboratories. Service with the Los Alamos Foundation will continue through the LLC. Regent Parsky reiterated the important role that UC played in effecting the transition and negotiating with the 8000 Los Alamos employees. Employees were ensured that a retirement benefit plan would be provided that was substantially equivalent to what existed through UC. A high percentage of employees has opted to enroll in the LLC program.

With respect to LLNL, regular Board meetings are being established at this laboratory as well to ensure regular oversight. The appointments of a CFO and a corporate secretary have been approved at LLNL. A capital call of \$1 million has been issued, \$500,000 of which has come from UC and Bechtel each, which will be reimbursed by the LLC as it receives its funding.

In summary, Regent Parsky stated that The Regents' objectives have been honored regarding UC's contribution to the national laboratories and UC's desire to be focused on science and technology; the LLC structure gives the University the opportunity to continue those objectives.

Regent Allen inquired as to the opportunities for public comment and public engagement with the Board of Governors of the LLCs. Regent Parsky responded that opportunity for public comment is present at The Regents' meetings on behalf of the UC, but because the entities are not public, no opportunities exist specifically for the LLCs. All of the arrangements that involve UC in the management of the laboratories will be made fully public. In response to another question posed by Regent Allen regarding community involvement, Regent Parsky stated that, with respect to the Los Alamos Foundation, a separate report will be presented at a future meeting. This Foundation seeks to make charitable contributions to the community in ways that can help low income groups in and around Los Alamos. Vice President Foley stated that an office exists at LANL to interface with the community and that efforts to support the community will be ongoing. Regarding the opposition by the City of Tracy to the National Bio and Agro-Defense Facility, Mr. Foley stated that the citizens simply did not want the installation near the city.

Regent Moores stated that all the laboratories are engaged in significant foundation work, and suggested that rather than an additional oral presentation at a Regents meeting, the written report on the Los Alamos Foundation could be issued to The Regents. Mr. Foley responded that such a report could be provided on the web site; Regent Parsky concurred with these suggestions.

4. **LAWRENCE LIVERMORE NATIONAL LABORATORY –
SUPERCOMPUTERS & THEIR APPLICATIONS**

This item was not presented.

5. **AUTHORIZATION FOR APPROVAL OF CONTRACT CLOSEOUT
AUTHORITY FOR CONTRACT W-7405-ENG-48 FOR THE OPERATION
OF LAWRENCE LIVERMORE NATIONAL LABORATORY BETWEEN
SEPTEMBER 2, 1952 AND SEPTEMBER 30, 2007**

The President recommended that he be authorized to take such actions as may be required to perform a termination of contract W-7405-ENG-48 for the management and operation of the Lawrence Livermore National Laboratory between September 2, 1952 and September 30, 2007, 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.

The current contract for LLNL is set to expire on September 30, 2007. A new prime contract (No. DE-RP52-06NA27344) was awarded to Lawrence Livermore National Security, LLC (LLNS) on May 8, 2007, and management and operations of LLNL will be transferred to that contract on October 1, 2007.

Effective October 1, 2007 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.

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 National Nuclear Security Administration and LNNS. However, there will be some continued administration that will necessitate that the old contract remains 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 contracts.

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

6. **APPOINTMENTS TO THE EXECUTIVE COMMITTEE OF THE BOARD OF GOVERNORS OF LAWRENCE LIVERMORE NATIONAL SECURITY, LLC, AND INDEMNIFICATION OF APPOINTEES**

The Chairman of the Board of Regents and the President of the University jointly recommended that the Chair of the Committee on Oversight of Department of Energy Laboratories recommend approval of the appointments of Executive Vice President Bruce B. Darling and Mr. William R. Frazer as permanent Governors of the Executive Committee of the Board of Governors of the limited liability company known as Lawrence Livermore National Security, LLC (LLNS); and that (1) these two individuals be indemnified against claims and liabilities that may arise in the course and scope of their service as Governors to the same extent as is permitted by California law and University policy, and, (2) the President be authorized to negotiate appropriate compensation for Mr. Frazer's service, not to exceed \$60,000 per annum, and to issue any terms of appointment necessary to implement the appointments and such indemnifications.

Beginning on October 1, 2007, the Lawrence Livermore National Laboratory will be managed and operated by Lawrence Livermore National Security, LLC (LLNS), a limited liability company owned and controlled by the University, Bechtel National, Inc., BWX Technologies, Inc., and Washington Group International, Inc. (Battelle Memorial Institute is engaged as an integrated management subcontractor of the LLC.). The governance structure of LLNS includes a Board of Governors that is charged with oversight and governance of the company. A six-person Executive Committee is the decision-making body of the Board of Governors. The LLNS LLC Agreement entitles the University to appoint individuals to three positions on the LLNS Executive Committee, including the Chair. Regental policy adopted in March 2006 prescribes the mechanism for nominating and appointing UC representatives to such positions.

Executive Vice President Darling and Mr. Frazer currently serve as permanent Governors of the Executive Committee of the Board of Governors of the limited liability company known as Los Alamos National Security, LLC (LANS). This recommendation is to appoint both Mr. Darling and Mr. Frazer as permanent Governors of the Executive Committee of the Board of Governors of LLNS. Mr. Darling has been serving as interim Executive Committee Governor of LLNS since his appointment to that position by The Regents at the September 2006 Regents Meeting.

Mr. Frazer was appointed as interim Executive Committee Governor of LANS at the March 2007 Regents meeting, replacing Chancellor Marye Anne Fox, who resigned from the LANS Board to focus full attention to her responsibilities as UC San Diego Chancellor. Mr. Frazer was appointed as a permanent Executive

Committee Governor of LANS by The Regents at the May 2007 Regents Meeting.

Chancellor Fox had agreed to remain Executive Committee Governor of LLNS pending the outcome of the Livermore competition. For the same reasons that applied to her request to resign from LANS, Chancellor Fox has asked to be relieved of her LLNS Governor assignments, and Mr. Frazer is recommended as her replacement. Mr. Frazer will also assume Chancellor Fox's position as the Chair of the LLNS Science and Technology Committee, a committee Mr. Frazer also chairs for the LANS Board.

This action will also serve to indemnify Mr. Darling and Mr. Frazer against claims and liabilities arising from their service as Governors, to the same extent as the University is required or permitted to indemnify its employees under California law. Mr. Darling is an officer and employee of the University. His acts as a LLNS Governor pursuant to this appointment are within the course and scope of his employment. Consequently, this action ratifies the indemnification the University is required to provide him by California Government Code Section 825. Mr. Frazer is a former officer and employee of the University, and, as such, this action is consistent with and ratifies the indemnification authority set forth in Regents' Standing Order 100.4(dd)(9).

Both Mr. Frazer and Mr. Darling have substantial experience in Laboratory matters, and have the confidence of the LANS and LLNS partners as well as key DOE and National Nuclear Security Administration officials.

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

7. **AUTHORIZATION TO APPROVE AND EXECUTE MODIFICATION TO THE DEPARTMENT OF ENERGY CONTRACT FOR THE LAWRENCE BERKELEY NATIONAL LABORATORY TO AMEND CLAUSE F.2**

The President recommended that he be authorized to execute a modification to the provisions of Lawrence Berkeley National Laboratory (LBNL) contract DE-AC02-05CH11231 in order to modify *Clause F.2 Award Term Incentive (Special)*.

From time to time changes are necessary to reflect the ongoing agreement between the University and the Department of Energy. The Department of Energy (DOE) has proposed a modification to *Clause F.2 Award Term Incentive (Special)* regarding determination of eligibility for award term extensions. The proposed language better reflects the agreement of the parties as to the criteria required to earn an award term incentive.

Vice President Foley stated that the award contract with LBNL is for a base period of 5 years, with a government option to extend it, up to a total of 20 years.

The government option is described as an award term; the government intends to exercise the option of its own volition if the University achieves certain prescribed levels of contract performance. The change proposed by the DOE is to amend the award term process to give the DOE more flexibility in varying the annual requirements for award term eligibility.

Faculty Representative Oakley recalled that the University is associated with three national laboratories, directly as contractor at the LBNL, and as a member of LLCs which themselves hold the prime contracts to operate the Los Alamos National Laboratory (LANL) and the Lawrence Livermore National Laboratory (LLNL). The term of each contract is for an initial period of 5 years for LBNL and 7 years each for LLNL and for LANL, with potential for extensions up to 20 years. The University's commitments to the LLCs that operate LANL and LLNL are the subject of complex operating agreements that have been made public. Faculty Representative Oakley stated that the Academic Senate is in the process of developing, in close cooperation with the Office of General Counsel, an analytical guide for the benefit of faculty and other members of the public as to the commitments of the University in their engagement with the laboratories. This analysis is set to be posted on the web site of the Academic Senate by the end of July 2007. Mr. Oakley explained that one aspect of the University's commitment is an award term extension clause. He stated that it is not foreseeable that the University will decide it is no longer in its interest to manage the LBNL, as it is a pure science laboratory, but it is a matter of divided opinion whether it is in the interest of the University to continue in its LLC partner role operating laboratories that deal with classified research and weapons design and production. The Academic Senate had concerns about whether reducing the trigger threshold standard for extending the contract for LBNL would also reduce the threshold standard triggering the extension of LANL and LLNL contracts. The Regents have received a letter from General Counsel Robinson rendering the opinion that the present change to the LBNL will have no impact on the existing award term clauses as to the contracts at LANL and LLNL. Based on these conclusions of the General Counsel, the Academic Senate supports this item.

Faculty Representative Brown encouraged the Regents to consider the implications of the unilateral extension of UC's involvement with the LLCs, because the mechanisms of extracting the University from the contracts are complex, sensitive, and need to be considered with due diligence.

President Dynes stated that, based on consultations with General Counsel Robinson, in the event that the University may consider extraction from the DOE contracts, it is Mr. Robinson's view that extraction would be complicated and would require substantial negotiation with the DOE, but that it would be possible.

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

8. **APPROVAL OF RESOLUTION TO EXCLUDE ACCESS TO CLASSIFIED INFORMATION FOR A REGENT**

The President recommended that The Regents adopt the following resolution pertaining to the University's respective Department of Defense and Department of Energy Facility Security Clearances, as follows:

WHEREAS, current Department of Defense and Department of Energy Regulations contain a provision making it mandatory that the Chairman of the Board, Chief Executive Officer, and those other officers and officials who are to have access to classified information meet the personnel clearance requirements established for a contractor's facility clearance; and

WHEREAS, said Regulations permit the exclusion from the personnel clearance requirements of certain members of the Board of Regents, provided that this action is recorded in the University Regents' Board Minutes;

NOW, THEREFORE, BE IT DECLARED that the Chairman of the Board, at least an official quorum of the Board of Regents, and the Chief Executive Officer at the present time do possess, or will be processed for, the required security clearance; and

BE IT RESOLVED that in the future, when any individual enters upon any duties as Chairman of the Board, as a replacement for one of the cleared quorum of the Board, or as the Chief Executive Officer, such individual shall immediately make application for the required security clearance; and

BE IT RESOLVED FURTHER that the following member of the Board of Regents shall not require, shall not have, and shall be effectively excluded from access to all classified information in the possession of the Corporation and does not occupy a position that would enable him to affect adversely Corporate policies or practices in the performance of classified contracts for the Department of Defense, U.S. Department of Energy or contracts with other Federal User Agencies of the National Industrial Security Program:

<u>NAME</u>	<u>TITLE</u>
Benjamin Allen	Regent

The University has security agreements with the U.S. Department of Defense (DOD) and the U.S. Department of Energy (DOE) in connection with research performed by the University involving classified national security information. Classified research undertaken by the University is not performed on campus, but is carried out off-campus, often at military installations. The University also has

management and oversight responsibility for weapons research and design work at the Lawrence Livermore National Laboratory through September 30, 2007, after which the contract will change to the new contractor, Lawrence Livermore National Security, LLC.

The University's security agreement with DOD incorporates the National Industrial Security Program Operating Manual (NISPOM). The NISPOM which applies to the DOD, DOE, and other Federal User Agencies, provides that the Chief Executive Officer, the Chairman of the Board of Regents, and at least a quorum of the Board of Regents have security clearances and that all other Regents have clearances unless specifically excluded from access to classified information in the possession of the University. The exclusion provision of the security agreement further requires that the University, by formal action of the Board of Regents, invoke such exclusion procedures designating the names of all Regents not in process for or who are ineligible for DOD/DOE clearances, and that this action be made a matter of record in the minutes of the Board.

Regent Allen is a dual citizen with the United Kingdom, and thus is not currently eligible for security clearance. Consequently, he must be excluded from all matters or deliberations that would affect corporate policies or practices followed in the performance of classified work under contracts for the DOD, the DOE, or other Federal User Agencies under the NISPOM. Although he must be excluded from possession of classified matter and from other deliberations, as specified above, Regent Allen, along with other uncleared guests, will be allowed to visit the national security laboratories in accordance with procedures for uncleared visitors. Therefore, in accordance with NISPOM procedures the proposed new resolution is recommended for adoption by the Board of Regents for Regents not in process and/or not eligible for a security clearance.

The proposed action is consistent with past resolutions.

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 11:40 a.m.

Attest:

Secretary and Chief of Staff