Office of the President
November 8, 2000

TO MEMBERS OF THE COMMITTEE ON OVERSIGHT OF THE DEPARTMENT OF ENERGY LABORATORIES:

ITEM FOR ACTION

For Meeting of November 15, 2000

APPROVAL FOR NEGOTIATIONS WITH THE DEPARTMENT OF ENERGY FOR THE OPERATION OF LOS ALAMOS NATIONAL LABORATORY AND LAWRENCE LIVERMORE NATIONAL LABORATORY

The President recommends that the Committee on Oversight of the Department of Energy Laboratories recommend to The Regents that the President be instructed to enter into negotiations with the Department of Energy to extend the current contracts with the Department of Energy for the continued operations of Lawrence Livermore National Laboratory and Los Alamos National Laboratory for a period not to exceed September 30, 2007.

BACKGROUND

The Department of Energy contracts for Los Alamos National Laboratory (LANL) and Lawrence Livermore National Laboratory (LLNL), pursuant to authorization from The Regents, were executed on September 18, 1997, and were effective October 1, 1997 through September 30, 2002. The contracts contain a DOE option to extend UC performance under those contracts to as long as September 30, 2007.

On September 17, 2000, Department of Energy (DOE) Secretary Richardson directed the National Nuclear Security Administration (NNSA) to restructure the department’s contracts with the University of California to address security and facility operations issues that have arisen at LANL and LLNL in the past two years. Subsequently, the University proposed a number of measures to strengthen oversight and operations at LANL and LLNL: the creation of a new Vice President for Laboratory Management and engagement of industrial expertise by the University to assist the Laboratories in improving specified operations. Given the significance of these changes and the need for consistency in effort to make these initiatives succeed, the University proposal is contingent on DOE extending the existing contracts sufficiently beyond the current expiration date of September 30, 2002.

DOE accepted the University proposal and agreed to extend the contracts to September 30, 2005. Preliminary to such an extension DOE requested that the University proposal for improvement initiatives be incorporated into the LANL and LLNL contracts as a contract appendix, and that such contract modification be accomplished by November 15, 2000. The President, pursuant to interim authority in Standing Order 100.4 (ee), has completed a modification to the contracts to incorporate the improvement initiatives.
DOE has proposed to begin negotiations with the University on November 20, 2000 on a minimum necessary set of issues that must be resolved as part of an extension by DOE of the contract period to September 30, 2005:

- University compensation for contract performance under an extended contract: performance management fee, University central Laboratory oversight costs, and the DOE’s share of system-wide indirect expenses.

- The inclusion of two new standard Department of Energy Acquisition Regulation clauses required to be in contracts whose terms are extended after 1999: authority of DOE to reduce performance management fee based on significant adverse events involving the environment, public and worker safety, and security; preparation of a plan to enhance workforce diversity at Laboratory operations.

The University’s objective in negotiations would be to assure that sufficient financial resources are provided to enable the University to continue managing the Laboratories as a public service. In this regard, new and anticipated statutory changes since the current contracts were entered into in 1997 modify the risks of unreimbursed costs and would apply to an extended contract: new statutory fines and penalties for security violations, statutorily-mandated fee reductions for security violations, removal of the statutory exemption for non-profit organizations from fines and penalties for Price Anderson Act nuclear safety violations.

Since 1992 the University has had a risk management strategy involving a performance management fee for operation of the UCDOE Laboratories, a reserve fund for excess and post-contract unreimbursed costs now totaling $20 million, and a University right to terminate contract operations with 18 months’ notice to DOE. Accordingly, the University believes that by maintaining an appropriate fee structure, obtaining a cost reimbursement agreement for the new initiatives, and making an adjustment to the indirect payments made to the University reflecting current system-wide costs, the University will retain the levels of operating cost coverage that The Regents deemed prudent in the 1992 and 1997 contract extensions. Historical levels of unreimbursed costs are well below fees paid to the University and the University has been able to return substantial funds from the fees to the Laboratories for discretionary research and conduct complementary and beneficial research for the Laboratories at University campuses.

The above matters are the minimum necessary set of issues that must be resolved as part of an extension by DOE of the contract period. DOE may propose additional contract terms that may be negotiated to the extent they support the overall objectives for the contact extension.

No action is required under the California Environmental Quality Act (CEQA) as The Regents have made a CEQA determination with regard to contract operations up to September 30, 2007 as part of the action approving the contract terms for LLNL and Lawrence Berkeley National Laboratory (LBNL) in 1997.
The contract for the operation of LBNL may be modified in some respects to reflect the change in contract compensation; however, DOE has not yet made a formal “extend/compete” decision with respect to LBNL and it may be that no action will be taken by DOE regarding the contract term for that Laboratory until later in 2001. The contracts for LANL and LLNL fall under the purview of the NNSA, while the contract for LBNL is under the purview of the Office of Science within DOE.