

An Introductory Guide to UC's Ties to LANS LLC and LLNS LLC and their Management of the Weapons Labs at Los Alamos and Livermore

Prepared and posted at the direction of the Academic Council by
Bill Eklund, University Counsel, University of California Office of General Counsel,
and
John Oakley, Chair of the Academic Council and of the Academic Council Special Committee on
Lab Issues

August 31, 2007

In 2003 Congress enacted legislation requiring that the federal contracts for the three University-managed National Laboratories, which had been managed continuously by the University since their beginnings some 50-65 years ago, be competed.¹ After considerable deliberation the University entered all three competitions, under somewhat different circumstances in each case. The three competitions have now been held and completed over the past three years.

The competition for LBNL was held first. The University entered that competition and was awarded the contract with only relatively minor changes from the previous contract, which are not addressed further here.

For the subsequent Los Alamos and Livermore competitions,² the University teamed with three commercial firms. Two partnerships were formed, one for each Laboratory, which are known as Los Alamos National Security, LLC (LANS) and Lawrence Livermore National Security, LLC (LLNS).³ These partnerships successfully competed for and were awarded the LANL and LLNL contracts, and assumed responsibility for the management of the two Laboratories in 2006 and 2007 respectively.

This Guide describes LANS and LLNS — their organization, their relationship to the University and its partners, and their rights and obligations *vis à vis* the US Government under the new management contracts between each LLC and the DOE — hereafter referred to as the “Prime Contracts.”

¹ Lawrence Berkeley National Laboratory (LBNL), Los Alamos National Laboratory (LANL) and Lawrence Livermore National Laboratory (LLNL). (Competitions were also required at the Argonne and Ames National Laboratories.)

² LANL and LLNL are owned by the United States Department of Energy (DOE). Both of these “weapons labs” engage in research pertaining, among other things, to the design and production of nuclear weapons. LANL also engages, to a limited extent, in the production of nuclear weapons. The contracts to manage LANL and LLNL are administered within DOE by the National Nuclear Security Administration (NNSA), which sponsors classified nuclear-weapons-related research.

³ In lab speak “LLNS” is pronounced as “LINS.”

A. Status and Operation of LANS and LLNS.

From a legal perspective, LANS and LLNS are properly characterized as “limited liability companies.” They are chartered under Delaware law and are also referred to here as the “Companies” or the “LLCs.”

Each Company is owned and controlled by the University and its three partners, Bechtel National, Inc. (Bechtel), BWX Technologies, Inc. (BWXT), and Washington Group International, Inc. (WGI).

The University and its partners are properly characterized as the “Members” of the LLCs. In casual parlance the Members are commonly referred to as partners, owners, or, in the parlance of DOE/NNSA, as the “parent organizations.”

Limited liability companies constitute a relatively new class of legal entities. While now recognized in all 50 states, this nationwide acceptance has occurred only in the last decade or two. They are intended to combine the most attractive attributes of traditional corporations and traditional partnerships. The members of an LLC are comparable in some respects to the shareholders of a corporation, and are comparable in other respects to the partners of a traditional partnership.

The two Companies are distinct legal entities. They are capable of owning property, entering into contracts, and otherwise acting in all respects as independent organizations. They also have their own workforces, consisting primarily of the approximately 18,000 former UC employees who chose to remain working at Los Alamos and Livermore under the new management. Yet the two Companies are also affiliates of the four LLC Members, by reason of being owned and controlled by them.

The Companies are also occasionally referred to as joint ventures or partnerships. They are perhaps most accurately described as ‘public-private partnerships,’ in view of the participation of the University along with the three commercial corporations.

Formation of the Companies.⁴

The Companies were formed for two reasons:

- NNSA required that any bidder for the LANL or LLNL contract be organized as a distinct, special-purpose legal entity dedicated exclusively to the performance of the contract; and
- the University sought to combine its capabilities as a major public research institution with the expertise of its partner organizations in managing

⁴ For simplicity of presentation in this Guide, where descriptive material is the same with regard to both LANS and LLNS, reference is made simply to “the Company” or “the LLC.”

functional areas in operations and administration, notably security, safety, business services, project management, and nuclear facility management.

The LLC structure was chosen as the form of legal entity for the two partnerships because it was deemed to offer the most flexibility in the organization and governance of the partnerships, and also because it proved to be particularly conducive to establishing a partnership between the University, as a public institution and an instrumentality of the state of California, and its three commercial partners. Some of the consequences of this choice are discussed below.

The Members of the Companies.

Bechtel National, Inc., is based in Frederick, Maryland. It is a wholly owned subsidiary of Bechtel Corporation, a privately held, global engineering and construction corporation with headquarters in San Francisco. Bechtel National, Inc., is primarily dedicated to serving federal and state governmental customers.

BWXT specializes in management of nuclear and other high-hazard operations and facilities. BWXT is a subsidiary of McDermott International, Inc., a diversified engineering and construction company. BWXT is historically derived from the nuclear reactor operations of Babcock and Wilcox Company, also a unit of McDermott International, Inc., specializing in the engineering, construction, and operation of power-generation facilities.

WGI is a publicly traded engineering and construction company with operations in diverse areas including the mining, utility, and nuclear power industries. At the time this Guide was prepared, WGI was being acquired by URS Corporation, a global design engineering firm.

All three of these Members hold various contracts and subcontracts with the Department of Energy.

In addition, as part of the LLNS enterprise only, Battelle Development Corporation is identified as an “integrated subcontractor” to the Company. Under this concept Battelle is entitled to share in the net income of the Company much the same as the Members, and assigns one or more individuals to the Company, where he or she is embedded in the Laboratory management structure and is primarily responsible for business development of federal agency funding sources other than DOE/NNSA. Because of this unique role, Battelle is sometimes referred to as a “partner” in LLNS, and was identified as part of the proposal team during the competition, although strictly speaking Battelle is a subcontractor to LLNS, not a Member of LLNS.

Governance and Management of the Companies.

Some flexibility is afforded in the establishment of any LLC. An LLC may be created to have organizational attributes that more closely resemble a traditional

corporation, or it may be created to have attributes that more closely resemble a traditional partnership. A corporate structure may be chosen for example, where it is intended that investors/owners will have a more limited role in the management of the company, more like shareholders in a corporation. Alternatively, a partnership-like structure may be chosen where it is intended that the investors/owners will have a more active role in the management of the LLC operations.

The structures of LANS and LLNS are somewhere in between. They were created to meet specific expectations of NNSA that the parent organizations be involved in the management of LANS and LLNS, and thus have certain attributes of a partnership. Yet they were also created to have some of the corporate formalities that are appropriate in view of the status of the Laboratories as established, long-term research institutions.

To explain, the Companies themselves have little or nothing in the way of financial or capital assets, being dedicated, single-purpose entities created for the sole purpose of accepting and performing the DOE contracts. They also have no significant staff, expertise, or experience of their own, apart from the contract workforce that is resident at LANL and LLNL. Recognizing this, NNSA expects the parent organizations to provide oversight and support to the operations of the Companies in all areas of contract operations.

Also, while it is the two Companies that have been legally awarded the NNSA contracts, NNSA awarded those contracts entirely on the basis of the skills and commitments of the parent organizations. Consequently the LANL and LLNL contracts contain explicit provisions specifying the ways in which the parent organizations are expected to provide continuing support and oversight to the operations of the Laboratory staff.

UC and its partners adopted an organizational structure to meet these requirements. Specifically, the Companies are established so as to be “managed by the Members,” a Delaware legal term meaning that the member organizations directly manage the Company as in a traditional partnership, as opposed to taking the passive role of investors or retaining independent corporate staff to manage the Company, as in a true corporation.

The LLC Agreements.

Each Company has an LLC Agreement (often referred to as the “operating agreement”).⁵ These contain all of the agreements among the Members on the operation and governance of the Company. They are analogous to a corporate charter, bylaws, standing orders, and articles of incorporation, all combined into a single

⁵ Both LLC Agreements have been posted on the Academic Senate’s website. See [Los Alamos National Security, LLC Limited Liability Company Agreement](#) and [Lawrence Livermore National Security, LLC Limited Liability Company Agreement](#).

document. The LLC Agreements can be changed only by unanimous agreement of all four Members. They establish the Boards of Governors, provide for the appointment of various officers, and dictate various rules and procedures relating to participation of Member representatives in the governance of the Companies. Most of the remainder of Part A is directed to a summary of these provisions.

The Boards of Governors.

Each Company is managed by the four Members primarily through a Board of Governors. The purpose of each Board of Governors is to oversee the affairs of its respective Company, which consist of the Company's management and operation of LANL and LLNL, respectively.

The LANS Board of Governors has 15 positions, six of which constitute an Executive Committee of the Board.⁶ The LLNS Board of Governors has a total of 16 positions, also with six of these Governors constituting an Executive Committee.⁷

The Executive Committees.

The two Executive Committees are essentially identical in structure and function. All decisions of each Board are made by the Governors on the Executive Committee. The other Governors are advisory to the Executive Committee and do not have voting rights.

UC is entitled to appoint three Governors to each Executive Committee, including the Chair (the "UC Governors"). Bechtel is also entitled to appoint three Governors to each Executive Committee, including the Vice Chair (the "Bechtel Governors"). However, one of the Bechtel Governors must be a representative of BWXT or WGI, who is nominated jointly by BWXT and WGI each year, and who must be approved and appointed by Bechtel.

Terms of appointment of the Governors on the Executive Committees, including for example any conditions relating to the duration of their appointments, compensation, or any limitations on their authority, are determined by their appointing Members.

The UC-appointed Chair has tie-breaking authority over most decisions of the Executive Committee, with certain exceptions (see "Voting," below).

Independent Governors.

⁶ [For](http://www.universityofcalifornia.edu/regents/minutes/2007/doe507.pdf) the current UC-appointed members of the LANS LLC Board of Governors, see <http://www.universityofcalifornia.edu/regents/minutes/2007/doe507.pdf>.

⁷ See the LLNS LLC website, at www.llnslc.com.

Five positions on the each Board are filled by individuals who are referred to as Independent Governors (also referred to as Outside Governors), and who are selected from among individuals, preferably of national stature, who are not employees or officers of the Members. The Independent Governors are appointed by the Executive Committee based on particular criteria set forth in the LLC Agreement relating to areas of expertise and experience desired to be represented on the Board (e.g., national security, security and safeguards, or science and technology).

In each case the Independent Governors are appointed by the Executive Committee and are advisory to the Executive Committee. The Executive Committee determines the duration, compensation, and other terms of appointment of the Independent Governors. The initial compensation rate for the Independent Governors for 2006 is \$50,000 per year, payable in arrears quarterly beginning with the full assumption by LANS of the management and operation of LANL on June 1, 2006, in addition to reimbursement of expenses for travel, lodging, and meals.

The LLNS Board, but not the LANS Board, includes in addition a Governor appointed by Battelle (the "Battelle Governor"). The Battelle Governor is non-voting and merely advisory to the LLNS Executive Committee. The Battelle Governor reflects the special status of Battelle Memorial Institute as an "integrated subcontractor" to LLNS under the terms of the LLNS LLC Agreement. The Battelle Governor, while not "independent" in the same sense as the other Independent Governors, is included here because he or she is independent of the four Members of LLNS.

Advisory Member Governors.

A recent change to the LLC Agreements allows UC and Bechtel to each appoint two additional "Advisory Member Governors" to the Boards. These individuals are not on the Executive Committee and do not vote. They are being added to the Boards so that UC and Bechtel can supply additional expertise to the Boards by appointing individuals with special competencies from within their respective organizations, who can participate in Board deliberations and also assume committee responsibilities and perform other like tasks that will advance the missions of the Companies.

Authorities of the Boards of Governors and their Executive Committee.

The Boards of Governors are the ultimate governing bodies of the Companies and are charged with overseeing the affairs of the Companies.

Within each Board of Governors, authority resides in the Executive Committee to exercise all rights, powers, and authorities of the Company, excepting only certain decisions that are reserved to the LLC Members. Decisions of the Executive Committee are made after appropriate consideration of the advice and counsel of the

Independent Governors and Advisory Member Governors; and, in the case of LLNS, the Battelle Governor also.

The authorities that are reserved to the Members are high level decisions that relate to the basic purposes of the Companies and the agreements among the Members set forth in the LLC Agreements. These authorities include, for example, any decision to amend the LLC Agreement; any decision to admit a new Member to the Company; any decision to accept a cardinal change to the Prime Contracts between the Companies and DOE/NNSA; any decision to reorganize the Company; and similar decisions of fundamental importance to Members.

Subject only the foregoing limitations, the Executive Committee is free to appoint officers or other managers of the Company, and may delegate such of its authorities as it deems appropriate to such officers, employees, or other representatives of the Company. The Executive Committee may also retain auditors, attorneys, or other professionals as necessary. For the most part the Executive Committees have appointed senior managers at the Laboratories as the primary officers of the Companies. As a practical matter most operational decisions are delegated to the President of each Company, who in each case is also the Laboratory Director.

Standing Committees.

Seven Standing Committees report to each Board. Additional *ad hoc* committees may be established from time to time by the Executive Committee. The Standing Committees and their Chairs are:

- Mission Committee – Chaired by an Independent Governor
- Science and Technology Committee – Chaired by a University Governor
- Nominations and Compensation Committee – Chaired by a University Governor
- Ethics and Audit Committee – Chaired by a Bechtel Governor
- Laboratory and Business Operations Committee – Chaired by a Bechtel Governor
- Weapons Complex Integration Committee – Chaired by an Independent Governor
- Safeguards and Security - Chaired by the Vice Chair or a Governor appointed by the Vice Chair.

In addition, the Executive Committees have created Benefits and Investments Committees to administer the employee pension and benefits plans of the Companies, particularly those pension and benefit plans covered by the Employee Retirement Income Security Act (ERISA). Members of the Benefits and Investments Committees are nominated by the Presidents and approved by the Executive Committees. These Committees exercise fiduciary responsibilities with regard to employees, annuitants, and other individuals covered by these plans, and provide periodic reports to the Executive Committees and the Presidents.

Appointment of Committee Chairs:

Appointments of Independent Governors to the Chair positions of the Mission Committees and the Weapons Complex Integration Committees are by action of the Executive Committees.

Appointments of UC and Bechtel Governors to the Chair positions of the other four Standing Committees are by action of the Chair and Vice Chair of the Executive Committees, respectively.

Chairs of the Standing Committees and any *ad hoc* Committees appoint individuals to their respective committees following consultation with the Executive Committees regarding cost and staffing limitations.

The Chairs of the Benefits and Investments Committees are nominated by the Presidents and approved by the Executive Committees.

Officers and Employees.

As noted, each Executive Committee may appoint officers, employees, and advisors of the Company. The Committee may also draw upon the services of employees or officers of the Members to support the Board's operations, and may retain services of accountants, auditors, and other professionals as necessary. Particular officers and their responsibilities, as authorized in the LLC Agreements, are summarized below:

Company President and Laboratory Director. For each Company, the President of the Company serves as its chief executive officer and also acts as the Laboratory Director. The Company President and Laboratory Director (hereafter referred to as the Company President) directs the day-to-day operations at the Laboratory and is responsible for executing DOE/NNSA programs while also ensuring contract compliance in Laboratory operations. To fulfill these responsibilities the Company President has such powers as are delegated by the Executive Committee and are not reserved to the Members or the Executive Committee. The Company President reports directly to the Executive Committee. Subject to the limitations of the LLC Agreement, and any policies or procedures established by the Executive Committee, and any written delegations from the Executive Committee, the Company President may sign and execute in the name of the Company contracts, leases, permits, and other transactional or regulatory instruments. In this regard, among the authorities conferred on the Company President are the following:

- The Company President is the resident supervisory representative of LANS or LLNS and has supervisory authority for all Company operations at the Laboratory and at other locations where DOE/NNSA contract work is performed; excepting only those Parent Organization Oversight activities that are authorized by the Prime Contract and approved by the Executive Committee or which are otherwise exercised by the Members in accordance with the LLC Agreement.

- The Company President is charged with the responsibility and granted the authority as Laboratory Director to issue the statutory annual assessment and certification of the stockpile under the authority of the Atomic Energy Act.
- The Company President is authorized to represent the Company with regard to all negotiations, petitions, approvals, amendments, reimbursement authorizations, advance understandings on allowable costs, and other contractual transactions with DOE/NNSA; excepting only the authority to approve “cardinal” modifications to the Prime Contracts, which is reserved to the Members.

In addition, with regard to LANS the Executive Committee has delegated to the Company President the authority to nominate and/or approve management appointments at the Laboratory as follows (LLNS has not yet fully developed its delegations as of the date of preparation of this Guide):

- (1) Candidates for the Principal Associate Director positions are nominated by the Company President using a process that includes representation from the Nominations and Compensation Committee. The Company President proposes the candidate to the Executive Committee for approval.
- (2) Associate Directors below the level of Principal Associate Director are nominated by the Company President and submitted to the Executive Committee for approval; and
- (3) Management positions below the Associate Director level are identified and filled through internal procedures approved by the Company President.

Under both the LANS and LLNS LLC Agreements, the positions of President/Laboratory Director and Deputy Laboratory Director are filled by joint action of the Chair and Vice Chair of the Executive Committee, with UC nominating the President/Laboratory Director and Bechtel nominating the Deputy Laboratory Director.

Other Offices that may be appointed for either Company by action of its Executive Committee are as follows:

Vice President(s). The Executive Committees may appoint one or more Vice Presidents. Vice Presidents have such powers and duties as may from time to time be assigned by the Executive Committee.

Secretary. The Executive Committees may appoint a Secretary, who acts as secretary of meetings of the Executive Committee, the Board of Governors, and the Members of the Company. The Secretary may also have other responsibilities assigned by the Executive Committee; including for example the maintenance of meeting minutes and records relating to the organization and management of the Company.

Chief Financial Officer: The Executive Committees may appoint a Chief Financial Officer responsible for financial planning, record-keeping, and reporting. The Chief Financial Officer reports to the Company President and is responsible for communicating financial performance and forecasts to the Boards of Governors and the Members.

Treasurer/ Controller: The Executive Committees may appoint a Treasurer and Controller responsible for the funds and other assets of the Company, and who is responsible for the accounting and financial books and records of the Company, who is also ordinarily responsible for collections of funds of the Company and their disbursement on behalf of the Company.

Contractor Assurance Officer: The LLC Agreements provide that each Executive Committee shall appoint a Contractor Assurance Officer who shall report to both the Company President and the Executive Committee. The Contractor Assurance Officer has primary responsibility for the development and maintenance of the contractor assurance system required by each Prime Contract.

Company Employees. In addition, the Executive Committee may appoint individuals to act in such executive and/or administrative capacities to manage the affairs of the Company as it may deem necessary for the efficient performance of the Contract. Such individuals may be appointed from within the ranks of Laboratory Employees (see below), consistent with NNSA policies and Prime Contract requirements; or they may be separately hired, retained, or drawn from among employees or officers of the Members made available for such purpose.

Laboratory Managers and Employees. Company managers and employees who are assigned to the contract work authorized and funded by NNSA under the Prime Contract, up to and including the President/Laboratory Director, are generally referred to as Laboratory Employees. All Laboratory Employees report directly or indirectly to the Company President. Appointments of Laboratory Employees in certain senior management positions are subject to Member nomination provisions of the LLC Agreement, as well as NNSA approval requirements under the Key Personnel provisions of the Prime Contract. Generally, the University is entitled to nominate senior managers responsible for science and technology programs at the Laboratories, and also the positions of Laboratory Counsel and External Relations; while Bechtel and the other partners are entitled to nominate senior managers in the remaining areas of business services and operations. Member nominations are made by action of the Chair and Vice Chair of the Executive Committee, with the subsequent appointments being made by approval of the Executive Committees.

Member Representatives. The Executive Committee may appoint selected representatives of the Members to participate as internal advisors to the Board and to act as liaisons between the Board and functional area managers of the Members.

The LLC Company Offices.

LANS maintains its principal office and company headquarters on LANL property in Los Alamos, New Mexico. The LANS office is led by an Executive Director appointed by Bechtel. The LLNS company office is located in downtown Livermore, California. In each case the right to appoint the Executive Director of the Company office is vested in Bechtel under the LLC Agreement. The function of the Company Office is to support the Board of Governors, including its Executive Committee and Standing Committees. Staff positions within the Company Office are allocated among the Members by the Executive Committee. Individuals are selected and assigned to the Company Office by the respective Members to fill such positions with the concurrence of the Executive Director of the Company Office. Such individuals may remain employees or officers of their assigning Member, or they may become LANS or LLNS employees while assigned to the Company Office, but in either case they serve under the general supervision of the Executive Director.

The responsibilities of the Company Office are to:

- Support Member oversight of Laboratory operations.
- Prepare, maintain, and administer the Parent Organization Oversight Plan required by NNSA, including the coordination of services provided at the Laboratory by Member employees on a temporary or intermittent basis.
- Support the Standing Committees of the Board of Governors by organizing and supporting regular meetings and special meetings as requested, acting as Secretaries to and liaison between the Standing Committee Chairs and Laboratory management, and ensuring that Standing Committee members are kept informed of current developments.
- Support the Company's Contractor Assurance System.
- Prepare, maintain, and administer the Community Commitment Plan as required by NNSA in coordination with the Laboratory Community Programs Office.
- Support operations of the Board as requested.
- Coordinate the use of Parent Organization experts to attain improvements in performance.
- Develop and maintain external stakeholder relationships.

Personnel Costs.

To the extent that costs of any Company officers or employees, Member representatives, or independent professionals appointed by the Committee are either reimbursed by NNSA under the Prime Contract or are borne by a Member without charge to the Company, the appointment of such individuals is by majority vote of the Executive Committee, subject to the special selection procedures for Key Personnel at LANL and for the Member employees assigned to the Company Office.

To the extent that such costs are not reimbursed by NNSA or borne by a Member, and are proposed to be borne as a cost of the Company and charged to the Company's earned fee, such appointments must be approved unanimously by the Committee.

Board Meeting Procedures.

The Chair of each Board presides at meetings of the Executive Committee and of the full Board. In the absence of the Chair at a called meeting, the Vice Chair presides. Meetings of the Board and its Committees are not subject to federal or state open-meeting laws. Attendance at meetings and any distribution of proceedings of meetings is determined by the Executive Committee.

Call of Meetings.

Meetings of either the Executive Committee or the full Board are called by the Chair or his or her designee. Notices of meetings normally include the date, location, agenda, and actions to be voted on. Action items are normally approved in advance by the Chair following consultation with the Vice Chair. Notice of a meeting is provided to each Governor entitled to participate at least 10 business days prior to the meeting. Meetings are generally called by email, with copies to any persons designated in advance by a Governor for such purpose. Every effort is made to poll Governors in advance as to their availability for a proposed meeting date and time.

Meetings of Standing Committees.

Meetings of the Standing Committees are called and scheduled by their respective chairs and ordinarily precede quarterly meetings of the Board. The Company Office provides necessary support to the operations of the Standing Committees.

Meeting Agendas.

Agendas for proposed meetings are based on recommendations collected by the Secretary and the Office Executive Director from the Governors, the President and his or her staff, and any designated Member Representatives. Following consultation a proposed agenda is presented to the President and then to the Chair and Vice Chair for approval.

Order and Conduct of Meetings.

Meetings of the full Board are typically preceded and/or concluded by a closed session of the Executive Committee.

Attendance at Meetings.

Meetings of the Board, including its Executive Committee and Standing Committees, are not public meetings. Attendance is by invitation or as otherwise authorized by the respective chairperson. Proposed attendees for meetings of the Executive Committee or the full Board will ordinarily be identified in the agenda and will be reviewed by the Chair, the Vice Chair, the President, and the Secretary prior to calling the meeting. The President will ordinarily identify and invite Laboratory

personnel deemed necessary for a particular meeting on the basis of the proposed agenda and prior recommendations.

Attendance (including invitees) is generally as follows, with exceptions based on the need for confidentiality in personnel and other matters:

A. Meetings of the Executive Committee

- Executive Committee Governors
- President/Laboratory Director
- Deputy Laboratory Director
- Secretary
- Designated Member Representatives

B. Meetings of the full Board

- All of the above
- Independent Governors
- Advisory Member Governors
- External Committee members as necessary to participate in subject matter presentations
- Invited presenters or observers

C. Meetings of Standing Committees or *ad hoc* committees

- As determined by the Chairs of the Committees.

Electronic Participation in Meetings.

Any Governor may participate in a meeting by phone or other electronic means if necessary. Individuals who so attend are expected to exclude unauthorized persons from listening in.

Voting.

Decisions of the Executive Committee are generally by majority vote, with the Chair having tie-breaking authority. Exceptions requiring a unanimous vote are:

- decisions that would result in the deliberate incurrence of unallowable costs
- distributions of fee shares to the Members
- approval of Company pension and benefits plans
- approval of the Parent Organization Oversight Plan required by NNSA
- approval of the Community Commitment Plan required by NNSA for LANL.

In addition, a unanimous vote of all the Governors on the Executive Committee is required to approve any action not properly noticed prior to a meeting, i.e., not issued 10 days in advance.

An Executive Committee Governor may vote on any item noticed for action by proxy or by advance instruction by email or letter.

At the discretion of the Chair, votes of the Executive Committee may be taken in closed session.

Quorums.

A quorum for an item properly noticed and requiring only a majority vote exists at a meeting so long as a majority of the Governors on the Executive Committee, including at least one UC Governor and one Bechtel Governor, are present at the meeting or are represented by proxy or written instruction with regard to the item.

For an action item properly noticed and requiring a unanimous vote, a quorum is deemed to exist with regard to the item among any Executive Committee Governors who participate in a properly noticed meeting or who are represented at such a meeting by proxy or written instruction with regard to that item.

As already noted, unanimous consent of all of the Governors of the Executive Committee, whether present or not, is required to take action on an item not properly noticed.

Distribution of Meeting Minutes.

Minutes of Board meetings are generally distributed to all Governors and officers of the Company. Minutes from closed meetings of the Executive Committee are restricted to Executive Committee Governors. Minutes, resolutions and records of any interim actions of the Executive Committee are permanently maintained in the Company records maintained by the Secretary.

Confidentiality.

Deliberations of the Boards and their committees are not public proceedings. The confidentiality and handling of documents or information generated in the course of Board activities is subject to guidance provided by the Executive Committees from time to time.

B. The Prime Contracts with NNSA.

The sole purpose of the two Companies is to provide the services prescribed by the Prime Contracts with DOE/NNSA.⁸

Those services consist largely (but not exclusively) of scientific research and development in areas related to nuclear weapons. Each contract contains a broad Statement of Work that references various research programs for which the NNSA is responsible. These range from basic research in fundamental physics, chemistry, biology, mathematics and other scientific fields, to applied research in various technical areas.

In addition to scientific research and development, the Prime Contract Statements of Work also require each company to provide or obtain all necessary support services that are incidental to the management of the Laboratory. These include such services as the provision of security services; facility management services, including maintenance, repair and construction of buildings, roads, and grounds; general administration, including finance and procurement; environmental remediation; and all other services that are necessary or incidental to the operation of a major federal facility.

Each Company is also authorized to perform work for other federal agencies and for private companies, subject to certain requirements and procedures established by NNSA. The bulk of such work is for the US Departments of Defense and Homeland Security, and other agencies having national security responsibilities.

There is some distinction between the Statements of Work of the Livermore and Los Alamos contracts. The contract for the operation of Livermore contemplates only research and development in support of the maintenance of the nation's stockpile of nuclear weapons. The contract for Los Alamos contemplates the same kind of research and development as at Livermore, but also provides for the possibility of production of certain nuclear weapon components, should the Government choose Los Alamos from among a number of alternative sites being considered for the long-term consolidation of NNSA's nuclear weapons production complex over the coming decades.⁹

The M&O Contracts and FFRDCs.

Because of the very broad range these activities encompass, the contracts are known as "management and operating" (M&O) contracts, and each Laboratory is

⁸ The Prime Contract between DOE and LANS LLC is posted on the web at <http://www.doeal.gov/laso/NewContract.aspx>. The Prime Contract between DOE and LLNS LLC is not yet posted on the web, but is virtually identical to the DOE's Request for Proposals, or RFP, from bidders for that contract. The LLNL RFP is posted on the web at <http://www.doeal.gov/llnlCompetition/RFP.htm>.

⁹ Los Alamos presently produces annually a very small number of plutonium "pits", which are a core component of nuclear weapons. The LANL Prime Contract allows for the possibility of NNSA increasing that number as deemed necessary.

known as a “federally funded research and development center” (FFRDC).¹⁰ These designations carry with them certain regulatory flexibilities that distinguish these facilities and these contracts from ordinary federal facilities and federal contracts.

All real property, facilities, and equipment at LANL and LLNL are owned by the federal Government. This distinguishes these Laboratories from other National Laboratories, notably Lawrence Berkeley National Laboratory, which are located on the contractor’s premises.

It is notable that LANS and LLNS have been awarded federal contracts, not grants, as are more commonly encountered at the UC campuses. While there are various distinctions between federal contracts and grants, the general difference is that under a federal contract a Government agency is purchasing goods and services in order to execute its own agency responsibilities; whereas under a federal grant funds are disbursed to awardees in order to support some social purpose approved by Congress. As a practical matter, the difference is that the Government retains greater control over, and has higher expectations of, the results produced under a federal contract.

The contracts themselves are of a type known as advance funded, cost reimbursement, award fee contracts. These are characterized by direct NNSA reimbursement to the Companies of all “allowable costs” incurred by the Company. For this purpose the Companies are authorized to draw from the Federal Reserve Bank, on a daily basis, all funds necessary to cover routine payroll and other operational expenses, the consequence being that neither the Companies nor their parent organizations need to supply any significant amount of working capital to finance the Companies’ operations.

While the vast majority of costs incurred are reimbursed by NNSA as ordinary and necessary expenses, certain costs may not be reimbursed. These include costs that are prohibited by law from being reimbursed by the Government (e.g., state or federally imposed fines and penalties, lobbying costs, or entertainment costs). Also, LANS and LLNS are potentially subject to certain DOE-imposed civil penalties and fee reductions for significant performance failures or violations of DOE safety or security requirements. These potential nonreimbursable costs represent a modest financial risk to LANS and LLNS, which risk is in turn borne by the four Members according to the fee sharing provisions of the LLC Agreements. The level of the maximum available fee sought in their bids by the Companies, and eventually offered by NNSA under the contracts, was determined by NNSA, and by LANS and LLNS and their Members, with the understanding that the probable fees earned should be sufficient to cover these risks.

Certain notable risks are borne by the Government. For example, under the Atomic Energy Act and the related Price-Anderson Act, the Government bears the risk

¹⁰ The Laboratories are also known as “GOCO” facilities, for “government-owned, contractor operated”, as opposed to “GOGO” or “government-owned, government-operated” facilities.

of nuclear incidents that may arise in connection with the contract work. This Act, which has now been in place for over 50 years, has provided both a statutory limitation on liability for nuclear events as well as an indemnification against the costs of liability for such incidents, to all contractors and subcontractors at the major DOE/NNSA facilities. This financial protection has long been considered a necessary precondition, by the University as well as other DOE/NNSA contractors, to accepting NNSA contracts involving nuclear operations.

Fee Distribution.

Each Company is paid a modest fixed fee as well as a larger performance-based fee for its services. A maximum available fee at each Laboratory sets an upper limit on the amount of fee that can be earned each year. The percentage of the maximum fee that is actually paid is determined annually by NNSA after a detailed appraisal of the Company's performance in various functional areas. While the quality of scientific research and development is the primary criterion at both Laboratories, all operational responsibilities are taken into account in determining the fee.

The fee earned by each Company is distributed to the four Members of the Companies, after deducting costs of certain key personnel compensation supplements and certain other non-reimbursable costs. Slightly different fee distribution formulas are used at Los Alamos and Livermore, as set forth in the LLC Agreements. Briefly, at LLNL the net income of the Company, consisting of the earned fee as reduced by deduction of all nonreimbursable costs, is allocated to the four Members according to a negotiated, fixed formula. At LANL the earned fee and any nonreimbursable costs are allocated separately to the Members, according to somewhat different negotiated formulas.

The Companies, as LLCs, are taxed as partnerships for federal income tax purposes. This means the Companies themselves do not pay federal income taxes, because they are treated as "pass-through entities," and the Members pay income tax only on their shares of the fees, in accordance with their particular tax circumstances. The University, as a nonprofit public research university, pays no federal income tax on its fee share and dedicates its net fee share to research and other purposes consistent with this status. The corporate partners, as for-profit organizations, are subject to income tax on their share of the net income distributed to them. This accommodation of the distinct tax statuses of the University and its partners is one example of the advantages of the LLC structure of the partnership.

Award Term Extension.

Since the sole purpose of the two Companies is to perform the NNSA contracts, the Companies will be dissolved at such time as the contracts expire or are terminated.

The two contracts are awarded for nominal initial terms of 7 years. A relatively unique feature of these contracts is that they can be unilaterally extended by NNSA in

the event of sustained outstanding performance, for up to 20 years. In future years award term decisions will be made periodically in connection with the annual performance appraisals and fee determinations.

This power of unilateral extension is significant because, in soliciting competitive bids for these Prime Contracts, NNSA did not offer bidders a reciprocal right of unilateral termination. As with virtually all contemporary federal contracts, NNSA has the right to unilaterally terminate either contract, either for default or for the convenience of the Government. While in past years the University held a reciprocal right unilaterally to withdraw from its National Laboratory contracts had it chosen to do so — initially on 12 months' notice, then on 18 months' notice — under recent UC contracts, and under the current LANS and LLNS Prime Contracts, the contractor no longer has such a right of unilateral termination.