Up For Sale:
Bidding for Management of the Nuclear Weapons Labs

Western States Legal Foundation
Special Report

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Synopsis:

Since the beginning of the Cold War, the two major nuclear weapons research laboratories - Los Alamos National Laboratory (LANL) and Lawrence Livermore National Laboratory (LLNL) - have been exclusively managed by the University of California (UC). But a number of scandals and "systemic management failures" in recent years have led to recommendations by independent commissions to re-evaluate, and if necessary, change managers at the Labs. After over fifty years of UC management, the U.S. Department of Energy (DOE), through its National Nuclear Security Administration (NNSA)[1], announced in 2003 that it would put the prime management contracts up for "competitive bidding."[2] The result (in 2005 for LANL, 2006 for LLNL) could be the end of UC management and its takeover by private corporations or a competing university.

The expensive bidding process for LANL is already underway. The competing parties include giant defense contractors such as Northrup-Grumman, huge civil engineering firms such as Bechtel, and major universities including Texas and the University of California itself.

The competing of the prime management contracts for LANL and LLNL presents key questions for the university communities and the anti-nuclear movement. Foremost is whether (a) the universities should continue to manage the weapons laboratories to allow, as some argue, a degree of constructive engagement toward conversion, environmental compliance and/or moderation of new weapons development, or (b) the universities should divest themselves from management of the weapons laboratories altogether. In the latter portion of this report, we conclude that the University of California's continued management of LANL and LLNL should be opposed, and that no university should consider bidding for the management contracts, based upon the fundamental inconsistency between their institutional mission and the furtherance of illegal and dangerous nuclear weapons policies and research. On balance, UC's participation in nuclear weapons research and production is incompatible with international law and morality, just as University investments in corporations doing business in apartheid South Africa was twenty years ago.

When:

All three University of California (UC)-managed laboratories, including Lawrence

Berkeley National Laboratory (LBNL)[3], are to be subjected to a competitive bidding process for the prime management contract, to be separately negotiated for each laboratory. As with most Department of Energy (DOE) initiatives, the schedule for the bidding process continues to be rolled back. Earlier this year, UC had requested DOE to conduct a joint bidding program for the Lawrence Livermore National Laboratory (LLNL) and the Los Alamos National Laboratory (LANL). DOE rejected this approach and announced on June 9, 2004, that separate bidding programs would take place for the two labs[4], meaning that in theory, LLNL and LANL could be managed by entirely different entities for the first time in their respective histories. UC will be eligible to bid to continue its management, but it will be required to compete with other universities and private companies.

Because the current Los Alamos management contract between DOE and UC expires in September 2005, the bidding process for LANL is proceeding on an earlier timetable than that for LLNL. It officially began with solicitations of "expressions of interest" which initiate the qualification process. In four to six months (perhaps longer), the National Nuclear Security Administration (NNSA) will issue a "request for proposal" which is the formal solicitations of bids. The actual bidding process is elaborate and expensive; the Regents of the University of Texas, a competitor for the LANL contract, committed to spend at least a half million dollars simply to prepare the prime contract bid for Los Alamos.[5] The NNSA believes it will be in a position to award the LANL contract in May 2005, a month before the LLNL competition is expected to begin with solicitations of expressions of interest.

DOE extended the current LLNL contract to 2006 to separate the bidding process from LANL's.[6] The LLNL bids will not be solicited before the fall of 2005, with bids due in the first part of 2006 and a contract awarded in May 2006.

Who:

The list of potential bidders for the Livermore prime management contract are unknown since the first stage - the submission of expressions of interest - will not begin until May 2005 at the earliest.

The list of potential bidders for the Los Alamos management contract is somewhat known but still is subject to change. NNSA received a number of expression of interest for the LANL management contract in July 2004. The list of the entities submitting these expressions, as compiled by NNSA, includes large defense contractors, major government logistics corporations such as Bechtel, and universities such as the Universities of Texas, Texas A&M, and California.[7] Bechtel and Halliburton are among the best known potential competitors who are already beneficiaries of some of the largest federal contracts in history. Lockheed-Martin, a defense industry giant which manages the Sandia National Laboratories in New Mexico and California, recently pulled out of

the bidding process for Los Alamos , but has not stated its intention as to Livermore.

The actual configuration of potential bidders will shift and evolve into "partnerships" and "teams" between candidate companies. The bid process will include the conglomeration of subcontractors to work under the umbrella of such potential prime contractors as Lockheed-Martin or Bechtel. The formation of "partnerships" "teams" and "alliances" will be closely tracked by industry insiders.

The corporations listed below have either submitted expressions of interest to bid on the Los Alamos prime management contract, are likely to partner with the LANL prime contractor, or which are potential bidders for the prime management contract for the Livermore Lab . The list will continue to change as the actual date for submissions for bids approaches.

Bechtel: The Bechtel Group, based in San Francisco, is a major government insider, with extensive experience in managing federal facilities. Bechtel (through Bechtel Nevada, a partnership with Lockheed Martin) manages the Nevada Test Site, where sub-critical underground explosions involving plutonium and high explosives, and other simulated weapons tests continue to be conducted as part of the so-called "Stockpile Stewardship" program. Bechtel Nevada already has a presence at both LANL and LLNL where it has satellite offices and ongoing programs.[8] Along with Lockheed-Martin, Bechtel has the most extensive nuclear weapons stockpile stewardship management experience outside of UC.[9]

Bechtel is a massive far-flung agglomeration of corporations which builds and supports projects worldwide including highways, bridges, pipelines, dams, water systems, copper mines, oil refineries, and nuclear power plants (150), including the large Tarapur facility in India. It is, literally, everywhere, on every continent. In 2003, Bechtel acquired new work orders worth over *$20 billion* .[10] Along with Halliburton, Bechtel received lucrative contracts for infrastructure and rebuilding in Iraq.

Bechtel alumni include former Secretary of Defense Casper Weinberger (former general counsel) and former Secretary of State George Schultz (former Bechtel president).

Lockheed-Martin: In a surprise turn, Lockheed Martin, widely assumed to be a front runner for the Los Alamos prime management contract, announced on August 6, 2004 that it would not submit a bid.[11] Lockheed-Martin, the largest U.S. defense contractor ($31.8 billion in sales in 2003)[12], had submitted an "expression of interest" in July to bid on the LANL management contract. In explaining its decision, a Lockheed-Martin spokeswoman stated that Lockheed decided against going through the process because of the cost of the bid process[13], a reason that should give other university and corporate bidders considerable pause in view of Lockheed Martin's immense size and resources. Since 1993, the company has managed the DOE's Sandia National

Laboratories in New Mexico and Livermore, California. It also manages the DOE's Oak Ridge National Laboratory in Tennessee, and partners with Bechtel to manage the Nevada Test Site.[14]

Lockheed-Martin is the lead contractor for the Theater High-Altitude Area Defense (THAAD) anti-ballistic missile defense system, the Space-Based Infrared System High (SBIRS-High) missile warning system, and a major contractor for the space based laser program. It is a major weapons exporter, producing the F-16 fighter for numerous countries. In 2000, Lockheed-Martin received the largest fine ever levied under the U.S. Arms Export Control Act for improper technology transfers to China.

Lockheed-Martin has profited greatly under the Bush Administration. Its net sales in the second quarter of 2004 were $8.8 billion, a 14% increase over second quarter 2003 sales of $7.7 billion.[15]

The Sandia prime management contract was renewed in 1998 and again in 2003 with no appreciable controversy.[16] The two engineering laboratories are strategically located: one is situated in over 400 acres across East Avenue from LLNL's main gate in Livermore, and the larger, home operations office (7700 employees, $1.7 billion budget) is in Albuquerque, New Mexico. Lockheed-Martin had little difficulty retaining its management contract against competition from the University of Texas, and enjoys broad political support.[17] Local politicians lobbied extensively in New Mexico for its contract to remain intact.[18]

In view of Lockheed Martin's support within DOE and its perceived success in managing the Sandia complex, Lockheed-Martin should not be counted out of a 2005 bid run for the LLNL prime contract.

Halliburton: Halliburton is a Houston corporation with operations in over 100 countries, which began its existence in the Texas oilfields. Haliburton is best known for its huge military support and logistics contracts through its subsidiary, Kellogg, Brown and Root (KBR). It has profited from the Army's privatization program, begun under President Clinton, to shift non-combat support operations such as food and construction to civilian contractors. KBR provides substantial work under government contracts to the United States Department of Defense and other governmental agencies, including world-wide United States Army logistics contracts, known as LogCAP, and under contracts to rebuild Iraq's petroleum industry, known as RIO. It is currently building long-term housing for U.S. military personnel in Iraq, military POW camps, and is rebuilding Iraqi oil fields.[19] Halliburton at present provides "site services support" under a five-year LANL contract said to be worth $700 million.

The current Administration (Vice-President Dick Cheney was the former CEO of Halliburton)[20] and its Iraq war , have been kind to Halliburton and its subsidiary,

Kellogg, Brown & Root (KBR). In 2003, 15% of Halliburton's total revenue was from Iraq, primarily under contracts for the United States government.[21] KBR revenues for the second quarter 2004 were $3.1 billion, a 68% increase over the second quarter 2003. The improvement was due to government contract activities, primarily in the Middle East.[22] Halliburton's overall revenues totaled $5.0 billion in the second quarter of 2004 alone, as compared with revenues of $3.6 billion in the second quarter 2003, and revenues of $5.5 billion in the first quarter 2004.[23]

As Halliburton's government contracts have expanded exponentially, it has run into its own problems with the U.S. government. Halliburton came under fire in the early '90s for supplying Libya and Iraq with oil drilling equipment which could be used to detonate nuclear weapons. Halliburton Logging Services, a former subsidiary, was charged with shipping six pulse neutron generators through Italy to Libya. In 1995, the company pled guilty to criminal charges that it violated the U.S. ban on exports to Libya. Halliburton was fined $1.2 million and will pay $2.61 million in civil penalties.[24]

The results of a government audit in December 2003 found that Halliburton may have overcharged the Department of Defense by $61 million in importing fuel into Iraq. Department of Defense officials referred the matter to the agency's inspector general, and the Criminal Division of the United States Department of Justice is also investigating Halliburton. Other government inquiries including the civil fraud division of the United States Department of Justice are looking into possible overcharges for work performed during 1996 through 2000 under a contract in the Balkans.[25] In 2002, public interest group Judicial Watch, Inc., filed suit against Vice President Cheney and the Halliburton Company, alleging accounting fraud during Cheney's stewardship of Halliburton in the 1990s.[26]

On January 22, 2004, Halliburton announced a potential over billing of approximately $6 million by one of its subcontractors under the LogCAP contract in Iraq for services performed during 2003. The Defense Department has also raised issues relating to KBR's invoicing to the Army Materiel Command for food services for soldiers and supporting civilian personnel in Iraq and Kuwait during 2003, which could amount to over $100,000,000.[27]

As of the date of this report, Halliburton is not yet on the list of corporations reported by DOE to have submitted expressions of interest for the Los Alamos prime contract. Given its existing large services subcontract with LANL, however, it is likely that Halliburton will be involved in the competition as either lead contractor or a partner. Additionally, Haliburton is in a reasonable position to bid for LLNL's management contract in 2005.

Northrop-Grumman: One of the largest defense contractors, Northrop-Grumman is based in San Diego and employs about 125,000 workers. The company is

mostly known for its work in building nuclear powered aircraft carriers, surface ships, and submarines. Northrop Grumman also built the B-2 stealth bomber and is heavily involved in military space systems.[28] A recent study by Northrop-Grumman's in-house think tank, "Future War", sheds light on the current pre-emptive strategic planning underway by major defense contractors in concert with the current Administration.[29]

Northrop-Grumman has benefitted enormously in the current war climate. Its sales of defense systems for the first six months of 2004 were $14.5 billion, as opposed to $12.4 billion for the same period in 2003.[30] To quote Northrup Grumman management, "United States defense contractors have benefitted from the upward trend in overall defense spending over recent years. The company believes that spending on recapitalization and transformation of the country's homeland security and defense assets will continue to be a national priority, with particular emphasis on areas like national missile defense. Substantial new competitive opportunities for the company include space based radar, aerial common sensor, "transformational communications systems", the Joint Unmanned Combat Air System (J-UCAS), and several international and homeland security programs. The company continues to focus on operational and financial performance for continued growth in 2004 and beyond."[31]

Northrop-Grumman's business is overwhelmingly in Department of Defense military programs, and it does not have a significant management track record at Department of Energy facilities. Its past practices, however, have come under question. . In August 1992, the United States District Court for the Northern District of Illinois unsealed a False Claims Act complaint brought by four individuals in the name of the United States of America, seeking compensatory damages of approximately $369 million, which could be trebled under the False Claims Act, together with statutory penalties of up to $39 million. In 2001, the Civil Division of the U.S. Attorney's Office intervened in the lawsuit.[32] On March 13, 2002, a jury in Indianapolis, Indiana returned a verdict of approximately $31 million against Northrup-Grumman for cost overruns.[33] Northrop-Grumman's management also estimates that the range of reasonably possible future costs for cleanup of its past environmental contamination could run from $256 million to $410 million.[34]

University of California: The University of California has managed LLNL and LANL for over half a century.[35] Undaunted by recent years of scandals and mismanagement, UC has thrown its well-worn hat into the ring and announced it will bid on continued management of both LLNL and LANL. In May 2004, UC's Academic Senate voted by 2-to-1 to support the Regents' decision to proceed with a bid, a higher ratio than in previous years when the management issue was submitted to faculty polls.[36]

But UC's status as a viable contender for the prime management contract appears to be eroding on a day-to-day basis in light of the July 2004 discovery of missing classified data at Los Alamos, triggering an unprecedented "stop work" order by LANL's

director on July 15 (see "why" section below). Former officials connected with the labs are now opining that the university's prestige, once considered essential for recruiting young scientists to nuclear-weapons work, is so deeply tarnished that the university will have to rely heavily upon private contractors or partner with other universities to save its contract at Los Alamos.[37] UC was ostensibly negotiating with mega-defense contractor Lockheed-Martin to partner on a prime management contract bid for LANL[38], even though lab insiders question whether, for Lockheed-Martin, UC's participation would have been anything other than a liability.[39] These discussions went for naught when Lockheed- Martin precipitously announced its withdrawal of its expression of interest in bidding for the LANL prime contract.[40]

There is also recent speculation that UC may chose to "no bid" for LANL and concentrate its efforts on retaining management of the two California laboratories, Lawrence Livermore and Lawrence Berkeley.[41]

University of Texas: A relative newcomer to the national laboratory system, the University of Texas has been aggressively planning to enter competition to manage the national weapons laboratories since 2002. In that year, UT spent approximately $800,000 to submit an unsuccessful bid to manage Sandia National Laboratory in New Mexico.[42] The UT Regents have been told to expect a far larger bill to prepare a bid for LANL,[43] and estimates of the cost of a LANL prime contract bid have ranged as high as $25 million.[44] UT, like UC, faces substantial opposition from campus groups opposed to participation in the nuclear weapons laboratories.

Battelle Memorial Institute: Battelle is a non-profit corporation which already manages Oak Ridge National Laboratories, which it operates with the University of Tennessee and the Pacific Northwest National Laboratory.[45] Battelle is expected to form a partnership with Bechtel and Texas A&M for the prime contract to manage the Idaho National Engineering and Environmental Laboratory (INEEL).[46]

Battelle, a player in search of powerful partners, was shaken up by Lockheed-Martin's surprise decision in August 2004 to bow out of the bidding for the LANL prime contract. Bill Madia, an executive at Battelle, was quoted in a local article: "What a lot of folks are worried about at Los Alamos is, can you go in there under today's conditions and be successful? For Lockheed to walk away is a serious signal to the marketplace that this is a serious challenge and contractors need to be cautious in making this decision."[47]

Titan Corporation: Titan's expression of interest to manage Los Alamos was probably based upon its hoped-for but ultimately frustrated merger with Lockheed-Martin in June 2004.[48] Titan, based in San Diego, bills itself as a "leading provider of comprehensive information and communications systems solutions and services" to the Department of Defense and intelligence agencies. The anticipated merger with Lockheed-Martin was apparently thwarted by the investigation of Titan under the Foreign

Corrupt Practices Act.[49] According to a shareholder class action complaint filed against Titan in 2004, Titan directors failed to disclose in merger discussions that it was under investigation for using millions of dollars to bribe foreign officials while competing for business in Africa, the Middle East, and Asia.[50] Titan Corporation employees have been accused of involvement in the Abu Ghraib, Iraq prison abuse scandal.[51]

University of Texas A&M: A dark horse university entrant likely to partner with others including universities such as UT[52], Texas A&Mdoes not currently have any major federal facility contracts. It bid earlier this year on the contract to manage INEEL. Texas A&M brings several advantages to the table over its University of Texas rival, including a more conservative academic base and a relative absence of student dissent.[53]

Other Expressions of Interest: A number of smaller (but still significant) companies have also submitted expressions of interest to compete for the Los Alamos prime management contract. It is likely that in each case, these companies intend to participate as an agent or partner with a larger institution such as Bechtel or a major university.

CH2M HILL: CH2M HILL is known as an major environmental remediation contractor employed extensively by government agencies including DOE, the Nuclear Regulatory Commission (NRC) and Department of Defense. CH2M is the prime contractor responsible for managing liquid radioactive waste at the Hanford Reservation in Washington.[54] The company offers services in engineering consulting related to industrial facility design, transportation, water treatment, and environmental remediation. Specialties include sewer and waste-treatment design, hazardous-waste cleanup, and transportation projects such as highways and bridges. CH2M HILL is also involved in federal nuclear waste cleanup projects, facilities operations and management, and security and emergency management services. Gross revenue for the company increased from $1,057,709 for the first six months of 2003 to $1,282,627 over the same period in 2004.[55] CH2M Hill was awarded three reconstruction contracts for work in Iraq, Qatar and Jordan. CH2M Hill's pretax profits have increased by over 30% between comparative periods in 2003 and 2004.[56]

Tetra Tech: Tetra Tech, a subsidiary of Honeywell, is a 9000-employee California corporation based in Pasadena, which has been quietly expanding its relationship with the Department of Energy in recent years, mostly managing environmental remediation.[57] Its operations include environmental engineering and restoration, groundwater cleanup, watershed management, and operations and maintenance support. Tetra Tech provides engineering and construction services for public and private facilities and designs and builds water supply systems. U.S. federal contracts account for about 33% of sales. On July 24, 2004, the company

announced it had been awarded a combined $42 million for environmental remediation at the Savannah River, South Carolina/Georgia and Hanford, Washington sites, where plutonium for U.S. nuclear weapons was produced.[58] Its earnings record favorably tracks that of other government contractors, breaking $1 billion for the first time in its history for a nine month period (first 3 quarters fiscal year 2004), a 38% increase over the same six months in its fiscal 2003 period.[59]

Computer Sciences Corporation: This is a California-based corporation with 90,000 employees, supplying information, computing and communications technology to the military, government and financial institutions. In 2004, CSC landed a half-billion dollar contract with the Strategic Air Command.[60] As with other defense-related contractors, CSC''s income has exploded under the current Administration; the company reported nearly a 20% jump in net income for the 1st fiscal quarter of 2005, and new contract awards of $4.9 billion.[61] The company is a top information technology (IT) service provider for the U.S. government, receiving more than 25% of its annual revenues from various contracts with the Defense Department. During the first quarter of fiscal 2005 the Company announced federal contract awards with a total value of $2.7 billion, compared to $474 million announced during the first quarter of fiscal 2004.[62]

Dade Moeller & Associates: One of the smaller entrants, Dade Moeller & Associates is an occupational and environmental sciences company, engaged in health physics, radioactive waste management, risk assessment, environmental protection, regulatory compliance and licensing, radiation litigation support, and decommissioning. It has only been in existence since 1994.[63] Its headquarters in Richland, Washington underscores its connection to the extensive (and expensive) Hanford Reservation clean-up. The company appears to have few if any defense connections. It has been heavily involved in NRC standards setting for cleanup and decommissioning. It is doubtful that Dade Moeller will assume responsibility for the prime contract except as a partner with a larger corporation or university.

Burns & Roe Enterprises: Burns and Roe is a smaller version of Bechtel, an older civil engineering firm which has greatly expanded its civil and military-related government projects. The corporation builds and maintains "complex projects ," spanning the gamut from schools and power plants to nuclear plant decommissioning. Burns and Roe has designed 11 nuclear power plants and participated in the design of 6 advanced reactor projects. It is assisting the NRC with developing treatment and disposal methods for various levels of radiological contaminated waste. In the 1990s, it was contracted by DOE to design and build the Accelerated Production of Tritium (APT) facility.[64]

Washington Group BWXT Operating Services: BWXT, apparently a partner of Washington Group, describes itself as "the premier manager of complex,

high-consequence nuclear and national security operations." As the owner/operator of the nation's largest commercial high-enriched uranium (HEU) processing facility and as manager/operator of the Y-12 National Security Complex in Tennessee, it possesses more HEU than any other company in the United States. As stated on its website: "BWXT is recognized as an authority on nuclear materials handling, processing, packaging, transportation, safeguards and security for high-consequence operations and we have an extensive safeguards and security apparatus that oversees complex operations." Furnishing security is a major component of the company's services.[65] BWXT is heavily involved with waste management operations at the Pantex, Texas, Y-12, Tennessee, and Mound, Ohio facilities.

The Why:

The Official Rationale: UC Is Incompetent. The message consistently given to justify "competing" the management contract for LANL and LLNL is that the University of California is inadequate to control the continuing security lapses at the laboratories, including lost classified data and missing equipment, and is unable to respond to facility safety issues. Ever since Klaus Fuchs, a member of the British team working on the Manhattan Project at Los Alamos passed atomic secrets to the Soviets in the late 1940s, the nuclear weapons laboratories have been dogged with security issues; however, these problems have become more public, as has the laboratories' managerial incompetence. In a 1995 report, an independent commission questioned the wisdom of the five-year automatic renewals of UC's management contracts for the weapons laboratories.[66]

UC's current management crisis at Los Alamos began its run as regular front page news five years ago. In 1999, DOE obtained the arrest of Wen Ho Lee, a naturalized American physicist working at Los Alamos, accused of spying for the Chinese government. Lee was indicted on charges of abusing classified material with "intent to injure the United States"—a phrase that most people interpreted as shorthand for espionage —but he was never convicted. After 277 days of incarceration, Lee struck a bargain with prosecutors in which he pled guilty to only one count (out of 59) of misuse of classified materials and was sentenced to time served and released on the condition that he would be available for questioning for the next year. This plea bargain was widely and correctly interpreted to be a defeat for the government, whose case against Lee had fallen apart for lack of any evidence of espionage. .[67] Federal District Court Judge James A. Parker later stated, "I believe you (Dr. Lee) were terribly wronged by being held in custody pretrial in the Santa Fe County Detention Center under demeaning, unnecessarily punitive conditions."[68] Despite a massive investigative effort, the government was unable to establish enough credible evidence that Lee was actually passing secrets to the Chinese government to press its case.

In 2001, DOE, with little discussion, extended UC's prime management contract

for both LLNL and LANL.[69] In 2002, the General Accounting Office (GAO, recently renamed the Government Accountability Office) recommended that unless UC made "significant improvements" in its security and safeguards performance, DOE's prior decision not to compete the prime management contracts should be revisited.[70]

The Lee case proved to be the first of several highly publicized laboratory management "scandals." A year later, two computer hard drives containing nuclear secrets disappeared from a guarded vault at Los Alamos only to turn up behind a copy machine. The mystery has yet to be solved.[71] In 2002, Los Alamos was ripped by a credit card fraud allegations and charges of an attempted cover-up after the Lab, advised by UC counsel, fired the two investigators it had assigned to get to the bottom of the case. One of them eventually received a nearly $1 million settlement from the University. The fired investigators appeared before a Congressional committee in early 2003 to describe a laboratory culture steeped in coverup and a prime directive to protect UC management at all costs.[72] Auditors found $4.9 million in questionable credit card expenses over four years, although Lab officials said all but $195,246 had been accounted for. Twice in four months last year two Los Alamos workers were contaminated from exposure to plutonium. The more recent case last August prompted a $770,000 fine from the Energy Department. But the fine will never have to be paid because by law the University of California, as a DOE contractor, is immune from such penalties.[73]

In April 2003, Secretary of Energy Abraham announced his decision to compete the LANL and LLNL contracts, citing "systematic management failures."[74] Another GAO report found serious deficiencies by UC management in what it described as "mission support." At Lawrence Livermore, the GAO found that UC had made little progress in developing an emergency management program. At Los Alamos, the GAO found problems with procurement and property management -- in other words, keeping track of government property. Both laboratories lagged in replacing old facilities and addressing nuclear safety requirements.[75]

In 2003, two independent panels came to similar conclusions regarding the need to compete the contracts. In July 2004, the GAO reviewed DOE competition policies and found that DOE could do more to compete management contracts for its facilities, oversee contractors and apply objective results to measure contractor performance.[76] A "Blue Ribbon" commission assembled by DOE issued a far more critical report in November 2003 which evaluated contractor-DOE relations from top to bottom. The report wryly observed that DOE was incapable of rating any of its managers at any level less than "outstanding" or "excellent", including UC.[77] The weapons laboratories were subjected to over a hundred "reviews" by DOE, NNSA and UC which accomplished nothing but the sacrifice of trees. The report cautioned, however, that the competition decision would have serious economic costs of between three to five *million* dollars for competing bidders, and that the decision to "compete" a particular contract did not appear to be fully linked to objective performance, a problem also afflicting the incentive

rewards given to management.[78]

On July 7, 2004, data-storage devices officially referred to as "classified removable electronic media", containing highly sensitive data, were found to have gone missing during an inventory check,[79] though it now appears likely that there was no missing material– just faulty inventory processes.[80] On July 15, 2004, Los Alamos Director Dr. Peter Nanos announced an extraordinary "stand down" of all classified research at the laboratory. Even the ultra-conservative UC Regent Ward Connerly, an enthusiastic supporter of the labs, was overheard to remark , "Part of me wants to say get rid of the damn labs." [81] NNSA Chairman Linton Brooks remarked that, "[T]here is something about the Los Alamos culture that we have not beaten into submission." S. Robert Foley, UC vice president for laboratory management commented that at Los Alamos, "When they did something wrong, it was 'musical chairs': They could move from one job to another [at the lab]. People didn't get fired ... and that's intolerable."[82]

On July 23, 2004, DOE Secretary Spencer Abraham ordered a temporary stoppage of classified research at all three of the major laboratories, LANL, LLNL and Sandia involving the use of removable electronic media.[83] On August 4, 2004, DOE extended the stoppage at LANL for an additional two months.[84] Bidding front-runner Lockheed-Martin's decision several days later to pull out of the race for the prime management contract at Los Alamos suggests that LANL's management and employee issues may be too organic, and too expensive, to make the management contract worthwhile for anyone.[85]

Livermore too has had its share of recent management difficulties. C. Bruce Tarter resigned his post as LLNL Director in 2002 after several years of problems. Livermore's biggest project, a mega-laser known as the National Ignition Facility (NIF), faced a billion-dollar-plus cost overrun and a host of extremely difficult technical problems. In early 2000, then Energy Secretary Bill Richardson called the project a "management nightmare." That year, Tarter was the only one of more than two dozen similar administrators to have his pay raise denied by the University of California."Hey, NIF didn't do well," says Tarter. "It's the message I would have sent."

From the outside, the real meaning of these highly publicized "scandals" is hard to assess. As noted earlier, large private defense contractors also have had their share of management failures, violation of contracting regulations, and other varieties of malfeasance. Over a half-century of management of vast institutions handling millions of classified documents, some number of mistakes was inevitable. Organizations run for the most part in secret and having a virtually unlimited draw on the public fisc justified by "national security" also create circumstances ripe for financial abuses large and small. One imperative for outside observers of the Laboratory management controversy should be to strive to understand why these issues– likely inherent characteristics of the

institutions of the military-industrial complex– should become a major public issue now. This was the consequence of choices made at various levels of the federal government– to conduct certain investigations, and to make their outcomes highly visible. Why they chose to do so is related to both the forces driving the Laboratory bid process, and to its likely outcome.

Another Reason: The Privatization of Nuclear Weapons Management. The management foibles and scandals involving Los Alamos and Livermore could not have come at a more propitious time for large private government contractors. If the national nuclear weapons laboratories fall under private management, this will further the policy goal of the current Administration to privatize as many of the tasks of national defense as possible, whether it be ground forces and support in Iraq, or nuclear weapons. The competitive bidding for the prime management contracts coincides with the laboratories' assumption of greater weapons production responsibilities, under DOE's ten-year-old Stockpile Stewardship program to modernize and expand nuclear weapons research and development.

As military programs come to overwhelmingly dominate the budgets of LANL and LLNL, it has become increasingly clear that the University of California's absentee landlord approach has fallen short of government expectations in a "wartime" environment. The tensions between weapons research and a *faux*-academic environment (LLNL is occasionally described as a 'campus') are now at the fore. Although continued management of the nuclear weapons laboratories remains strongly supported by the UC Regents and faculty, the historic justification for the university-laboratory relationship has badly frayed. Even so, in light of the fifty-plus years that this relationship has lasted to the mutual profit of UC and the federal government, , it is entirely possible that, like so many DOE initiatives, the competitive bidding program may be quietly shelved before the current contracts expire.

The incentive fees associated with the prime contract are significant (for LLNL, $25 million),[86] and sought after by both UC and the University of Texas as sources of scarce institutional income. However, for large corporations such as Bechtel and Lockheed-Martin, the incentive fees are probably secondary. The two contracts for LLNL and LANL entail management of over *$3 billion dollars* of gross operating funds. Traditional military contractors such as Lockheed-Martin and Northrup-Grumman, with historic ties to exotic weapons initiatives, are well positioned to assume management of the weapons laboratories, as Lockheed has done at Sandia. For military contractors, the prime benefit of assuming management of LANL and LLNL may be to further the vertical monopolization of weapons and delivery systems development.

The George W. Bush years have witnessed the explosive growth of a second tier of corporations which are assuming support, infrastructure and logistics responsibilities traditionally carried out by rear-echelon military personnel, or government employees.

These companies already have experience in personnel management, government procurement, security, and operation of large complex facilities. For major infrastructure suppliers and managers such as Bechtel and Halliburton, management of the weapons laboratories presents a valuable entre into the vast multi-billion dollar nuclear weapons complex, and into nuclear waste management as well. These companies will not be constrained by UC employment criteria or rules.

In the early 1990s, DOE projected remediation costs for the nuclear weapons complex in the tens of billions of dollars. Some of the companies expressing interest in managing LANL are well-versed in hazardous waste management, such as Washington Group BWXT and CH2M Hill.

The decision to bid for the prime management contract for LANL or LLNL is far from a simple cost-benefit analysis. The overarching responsibilities of a manager under the prime contracts are the unglamourous tasks of labor relations, supplying non-research administrative personnel, physical infrastructure, security, and environmental management. The prime manager (at least if it is a university) is not necessarily integrated into all areas of actual programmatic research, and does not automatically acquire patent rights to new inventions and processes.[87] *Many if not most of the larger military contractors already have existing access to and responsibility for key weapons programs within the laboratories without assuming the administrative headaches of caring for thousands of employees and a myriad of physical facilities*. These considerations may have induced Lockheed-Martin to second guess its initial decision to bid for the Los Alamos prime contract.

Will the University of California Lose the Management Contracts?

On paper, the stakes are highest for the University of California itself. DOE's decision to "compete" the management contracts, however sugar-coated, is widely perceived as a punitive measure to send a clear message to complacent UC administrators that its standing with DOE is at low ebb. If the DOE actually follows through (a major *if*), and there is a successful competition process culminating in a change in lab management, the University will appear to have "lost" the contracts due to its own incompetence. Second, the fees associated with managing the contracts will be lost. Third, the University may lose a major portion of its small but significant access to laboratory research facilities. Combined with the current financial distress the University confronts, the loss of the management contract will be considered by many as a blow to the University's scientific reputation.

These outcomes are not necessarily foregone conclusions. The proposed bidding process for the two weapons laboratories will be lengthy, complex, and above all, expensive.[88] DOE's history is repletewith half-begun programs, initiatives, and processes that are quietly abandoned and shelved - witness the multiple programmatic initiatives

addressing environmental remediation at numerous sites started and stopped in the 1990s at some early, paper-only "milestone." The possibility that DOE will abandon its decision to compete the contracts is increased by unprecedented nature of the competition process for these major laboratories. DOE's expectations may be thwarted early if other companies follow Lockheed-Martin's lead in deciding that the laboratory contracts are not worth the cost and risk, and other institutions such as universities discover that they simply cannot affordto assemble an adequate bid package.

The other side of this coin is the political and economic decision by the University of California *itself* whether to submit a bid, a decision which has important implications for student and academic organizations who do not favor the continuation of the University's connections with the nuclear weapons complex. The determination by the University to assemble a bid for LLNL or LANL will be the first time that the desirability of management contract renewal will be the subject of serious practical discussion. The fact that the question is now on the table opens the possibility of a debate with the actual potential for substantive consequences for the UC-laboratory relationship, as opposed to a theoretical exercise. These consequences are addressed in the final section of this report.

The Once and Future Laboratories:

What would a Bechtel or Halliburton managed laboratory look like? Before answering this question, it is important to recognize that *many LLNL and LANL programs are already privately managed or partnered, so that for many of these activities, the change of prime contractors will have little significance on day-to-day operations.* Further, as we have seen, the largest private military contractors are no strangers to inefficiency and scandal themselves.

As powerful corporations typically are bent on increasing returns to their shareholders, pure academic research will take more of a backseat to production and proven applications. The "campus" veneer will be stripped from the laboratories, and the sole recourse of aggrieved employees will be expensive lawsuits against a corporate colossus. Whatever minimal "transparency" remaining to a UC-managed laboratory will disappear altogether (the Visitor's Center will be an early victim), and its operation will henceforth parallel Lockheed-Martin's opaque management of the Sandia Laboratories.

But before mourning the loss of UC "oversight", it is important to recognize that the University of California Regents (a conservative institution which greatly favors the prestige associated by them with the management contract) have never expressed any active interest in looking under any laboratory rocks, as many whistle-blowers have learned to their distress. Likewise, the UC-managed laboratories have historically been just as resistant to environmental or regulatory oversight as their private counterparts. LLNL's Superfund status, and the numerous environmental contamination issues

associated with both laboratories, have all occurred under UC's watch.

Western States Legal Foundation believes that the University of California should divest itself (or be divested) from management of the Los Alamos and Livermore Nuclear Weapons Laboratories

Western States Legal Foundation (WSLF), a nonprofit organization which has monitored the nuclear weapons laboratories for over 20 years, has consistently criticized UC management of the laboratories, and the fundamental inconsistency between the University's mission -- learning and academic freedom -- with nuclear weapons research. After more than fifty years of management, it can fairly be stated that the University's "oversight" has been negligible, and that any positive influence of the University's connection with the laboratories is outweighed by the academic gloss which has allowed laboratory employees to legitimize their role in designing nuclear weapons.

As bad as UC's relationship with the weapons laboratories has been, there can be little positive to say about a privately-managed laboratory system run by a Bechtel or Lockheed-Martin. Not surprisingly, the current LLNL and LANL directors have warned that the business of the nuclear weapons laboratories should not be left to a corporation driven by profit and dominating the market.[89] The privatization of all facets of the defense and war-making establishment, altogether necessary for its increasing expansion and infiltration into daily life, will further wall off the laboratories from the already minimal public and regulatory scrutiny to which they have been subjected. This development is entirely consistent with increasing role of the laboratories in nuclear weapons production activities, and the reinforcement of national security state mechanisms under the current Administration.

The foregoing notwithstanding, the competitive bidding process now underway may constitute the last opportunity for faculty and students inside the University of California, not to mention California taxpayers as a whole, to examine and debate the moral and political issues associated with UC's management of the two national nuclear weapons laboratories, including what actually occurs inside the gates. This debate is important not as a mechanistic exercise of "should *we* manage the laboratories?", but rather, should the laboratories, configured in the current mission, be operated at all to the detriment of international nuclear non-proliferation and the environment.

The propriety of the University of California's relationship and management of the nation's nuclear weapons laboratories has been debated nearly as long as the laboratories have been in existence.[90] The debate intensified in the early 1980s during the Reagan-era nuclear arms buildup, and the last flurry of underground nuclear testing later in the decade. Two University of California academic committees, in 1989 and in 1996, recommended the phasing out of UC's management of the weapons laboratories.[91] However, the termination of UC's prime contract to manage Livermore and Los Alamos

remained only a hypothetical possibility until last year.

The debate over the University's continuing management role has taken several forms. Those in the University who favor identfavored continuedUniversity management to cite access to advanced scientific facilities, opportunities for enhancing "academic freedom" within the laboratories, and the prestige associated with operating the weapons laboratories as benefits of the Laboratory-University relationship. In their view,, From this perspective, the University is assumed to have a significant positive influence on laboratory operations, including on such matters as worker safety and environmental compliance. The University Regents have consistently supported the University contract and have actively discouraged significant discussion of any change in the relationship.

Outside the University, there have been two prevailing attitudes among watchdog groups and non-governmental organizations (NGOs) monitoring the nuclear weapons establishment. For the most part, the two positions have coexisted peacefully in the umbrella organizations, coalitions, and even within the memberships of individual NGOs, since, prior to this year, neither conversion nor divestment appeared destined to become a practical reality. The following brief descriptions are in no sense comprehensive, and doubtless suffer from some degree of oversimplification and incompleteness.[92]

> ***Conversion:*** The conversion model looks to the evolution of the weapons laboratories into sociallyositive and ecologically sound research centers. This view received its strongest encouragement in the early 1990s when then-Secretary of Energy Hazel O'Leary speculated on the possibility of transforming LLNL into a "green" laboratory. Her generalized and vaguely formed remarks were quietly shelved when, by 1994, the Department of Energy embarked on the now-continuing Stockpile Stewardship Program to consolidate the nation's nuclear weapons facilities and expand the system's capabilities to modernize the stockpile through advanced simulated testing technologies.
>
> The conversion model incorporates some of the assumptions of the academic establishment, in that University management is preferable and probably essential to successful conversion of the laboratories to socially and ecologically responsible pursuits. This model is also mindful of the loss of jobs that would result if the laboratories otherwise terminated all activities, and the diminished research opportunities that students and faculty would have if management of the laboratories passes to a private contractor.
>
> ***Divestment*:** This view advocates termination of the University management contracts and the end to University involvement in nuclear weapons research and development. The principal drivers to this goal are moral and historic, viewing the connection between the academic institution and the development of nuclear

weapons as *ultra vires* and immoral, and pointing to the relative absence of evidence that the University has exercised any meaningful moderating influence on nuclear weapons work. Those who favor divestment view nuclear weapons research as fundamentally wrong, and also as the determining factor in the character of the Livermore and Los Alamos Laboratories. In this view, the nuclear weapons laboratories are seen as powerful and dangerous institutions. Other institutions that voluntarily associate with the Labs are more likely to suffer negative consequences than to have a positive influence on either the direction of Laboratory research or the character of day-to-day Laboratory operations.

The true nature of the University relationship. Western States Legal Foundation (WSLF) has monitored the activities of the nations' nuclear weapons laboratories for nearly all of its history since 1982, and has been involved in countless hearings and administrative proceedings before the federal government, state government, local agencies and the University of California Regents. WSLF has acted as counsel of record in legal and administrative proceedings against DOE and the Regents involving LLNL and the national nuclear weapons complex. WSLF also has done extensive analysis of the impact of U.S. nuclear weapons programs and policies on international arms control and disarmament regimes.

1) ***Continued research, testing and development of nuclear weapons undermines U.S. Treaty commitments and contributes to the erosion of the nuclear non-proliferation regime.***

The end of the Cold War did not fundamentally alter U.S. policy favoring maintenance of a large nuclear weapons stockpile coupled with explicit or implicit threats of first use. In the early 1990s, the weapons laboratories played a critical role in the development of what become known as the "Stockpile Stewardship Program." The stated purpose of this program was the development of improved technologies to ensure the safety and reliability of the existing stockpile in a comprehensive test ban regime. It quickly became apparent, however, that a core purpose of the program was to allow the development of nuclear weapons with new military capabilities to continue, using sophisticated simulated testing technologies.[93]

Nuclear weapons research, already resurgent in the late 1990s gained new impetus under the Bush Administration. The Defense Department's 2002 *Nuclear Posture Review* (NPR) serves as the primary justification for the current $6 billion-plus annual budget for nuclear weapons research, development and testing activities – not including delivery systems and command and control, which account for many billions of dollars more.[94] The NPR expanded the role of nuclear weapons in U.S. national security policy, including the possible use of nuclear weapons in "immediate, potential, or unexpected contingencies" against a number of named

countries such as Iraq, Iran and North Korea, called for indefinite retention of a large, modern, and diverse nuclear force, and rejected ratification of the Comprehensive Test Ban Treaty.

Significantly, the NPR also elevated the weapons research and development infrastructure – *including the nuclear weapons laboratories* – to one leg of a "New Strategic Triad," intended to support both "offensive" and "defensive"nuclear and non-nuclear high-tech weapons systems that will enable the U.S. to project overwhelming global military might. The NPR specifies: "The need is clear for a revitalized nuclear weapons complex that will: …be able, if directed, to design, develop, manufacture, and certify new warheads in response to new national requirements; and maintain readiness to resume underground nuclear testing if required." To accomplish this, the NPR calls for: "Transfer of warhead design knowledge from the current generation of designers to the next generation" through an "Advanced Concepts Initiative."[95] The UC-managed laboratories house the centerpiece nuclear weapons development technologies including the National Ignition Facility and prototype plutonium pit manufacturing facilities. In December 2003, Congress approved *in toto* the Administration's request for $6.2 billion in nuclear weapons research, expansion and upgrades.[94] In February 2004, the Defense Science Board Task Force in its report, "Future Strategic Strike Forces," called for the aggressive development of weapons "more relevant to the future threat environment" of rogue states and non-governmental terrorist groups.[95]

The Bush administration has requested $6.6 billion for nuclear weapons activities in fiscal year 2005 - an increase of 5.4% over the 2004 appropriation. As of July 2004, both the House and Senate had completed floor action on the defense authorization bill to authorize the President's proposals for new nuclear weapons. These proposals include: $27.6 million to continue a study of a Robust Nuclear Earth Penetrator (RNEP), a *high-yield* nuclear bunker buster to be used against hardened and deeply buried targets; $9 million for the Advanced Concepts Initiative (ACI), which would include possible research of low yield nuclear weapons, or "mini-nukes"; $30 million for a Modern Pit Facility (MPF) to enable large scale production of plutonium pits - the atomic cores of thermonuclear bombs and warheads; and $30 million for Enhanced Test Readiness of the Nevada Test-Site.[96] In an unexpected development, the House Energy & Water Development Appropriations Subcommittee zeroed out funding for these weapons programs and cut the funding for enhanced test readiness in half. As of this writing, the Senate Appropriations Subcommittee on Energy & Water Development is scheduled to mark up and approve its bill any day, and the final outcome remains to be seen.[97]

In conjunction with the Lawyers' Committee On Nuclear Policy (LCNP), WSLF

has consistently advocated the complete termination of nuclear weapons research, and ultimate nuclear disarmament, both as a moral and legal imperative and as the most effective means to foster nuclear non-proliferation.[98] The continued development of new nuclear weapons capabilities and reliance on nuclear weapons as an instrument of national policy by the world's most powerful state flies in the face of its obligations and commitments under Article VI of the Nuclear Non-Proliferation Treaty (NPT) and is a major factor in the continued erosion of the nuclear non-proliferation regime.[99]

The Nuclear Non-Proliferation *and* Disarmament Treaty

The NPT established mutual commitments and obligations between nuclear and non-nuclear weapon states. In return for the non-nuclear states agreeing to forego nuclear weapons, the nuclear powers agreed in Article VI to cooperate in halting the nuclear arms race "at an early date" and to proceed down the road to the complete elimination of their nuclear arsenals. (The non-nuclear weapon states were also promised assistance with the development of civilian nuclear technology.) Article VI provides:

> "Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control."

The NPT represents the only binding commitment in a multilateral treaty to the goal of disarmament by the nuclear-weapon States. Opened for signature in 1968, the Treaty was ratified by the U.S. and entered into force in 1970, thus becoming domestic U.S. law. The NPT's initial duration was 25 years, and in 1995 it was extended indefinitely. To date, a total of 188 States parties have joined the NPT, including the five original nuclear powers, the United States, the United Kingdom, Russia, France and China. More countries have ratified the NPT than any other arms limitation and disarmament agreement, a testament to the Treaty's significance.

In 1996, the International Court of Justice, the judicial branch of the United Nations and the highest and most authoritative court in the world on questions of international law, issued an advisory opinion on the legality of the threat or use of nuclear weapons. The Court de-linked the obligation to achieve nuclear disarmament from the obligation, also found in Article VI, to achieve "general and complete" disarmament. In what is now *the* authoritative interpretation of Article VI, the Court found unanimously:

> "There exists an obligation to pursue in good faith and *bring to a*

conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control." (emphasis added)

In 2000, at the close of the first 5-year NPT Review Conference since the Treaty's indefinite extension in 1995, the United States and the other nuclear weapon states committed to an "unequivocal undertaking... to accomplish the total elimination of their nuclear arsenals." For the first time in the Treaty's 30-year history, they dropped qualifiers like "ultimate goal" regarding their nuclear disarmament obligation. They also agreed to "a diminishing role for nuclear weapons in security policies to minimize the risk that these weapons will ever be used and to facilitate the process of their total elimination." In addition, the U.S. committed to "concrete agreed measures to reduce the operational status of nuclear weapons," meaning it promised to work with Russia to take nuclear forces off hair-trigger alert. And the U.S. agreed that a no-backtracking "principle of irreversibility" applies to "nuclear disarmament, nuclear and other related arms control and reduction measures."[100]

2) The history of University management of the weapons laboratories does not support the assumption held by the academic establishment or conversion adherents that the University has had a moderating or "good" influence on the weapons establishment, or is more likely to bring about the goal of conversion.

There is little material evidence that the University's management of LANL and LLNL has advanced the goals of economic conversion, environmental remediation and compliance, or disarmament. To the contrary: nearly all significant laboratory missions and policies are directed by DOE (and recently, NNSA), and the University's involvement is principally in the realm of financial management and employee relations. LLNL and LANL are, for all intents and purposes, federal facilities, and have consistently taken the position that compliance with host-state environmental and safety requirements are voluntary and not mandatory. The University does not participate in the budgeting of programs or mission requirements but lends its name, employees, and resources to such activities.

Assumptions regarding the positive aspects of University participation in laboratory programs, or encouragement of non-weapons programs, rest largely on anecdotal data, with no systematic analysis. In fact, the level of non-nuclear weapons programs at the Labs has declined in recent years in line with the consolidation of the overall nuclear weapons complex and concurrent shift of key development and prototype programs to the research laboratories. Moreover, even the facade of a vibrant civilian research program at the Labs has been dropped. For example, although funded from its inception entirely as a defense program, the multi-billion dollar National Ignition Facility at LLNL was publicly touted in

its early years as an important civilian fusion research facility. It is now promoted unabashedly as the centerpiece of the NNSA's Stockpile Stewardship program.

The University's view of its management responsibilities has remained constant in recent history. It operates facilities as a landlord, pays workers and smooths over employee issues. It does not involve itself, or seek to involve itself, into the day-to-day secret weapons programs. The University can best be characterized as a benign, semi-absentee landlord, which, for a fee, allows laboratory weapons researchers to pass themselves off as University employees and to describe the weapons factories as somehow akin to "campuses." The Regents have expressed little interest in laboratory oversight, and have studiously avoided any meddling that would jeopardize the management contracts. Attempts by academic communities and student groups over the years to challenge the misapplication of "academic freedom" in the service of nuclear weapons research at the Labs have been sporadic and inconsequential.

The divestment paradigm. The debate between "constructive engagement" versus "divestment" is not unique to discussions of the future of the nuclear weapons laboratories. These discussions parallel long-standing conversations within other progressive organizations addressing campaigns for socially responsible investing as a tool for material change.The key choice is whether to continue to maintain investments in corporations as a tool to influence corporate conduct, or to divest from such corporations in order to more effectively promote change and to dissociate the investor from socially undesirable activities. The call for UC to divest the weapons laboratory contracts resembles prior and current divestment campaigns on matters of world importance. Of these, the most successful and well known was the campaign for universities, churches, pension funds and other fiduciaries to divest equity ownership interests in corporations doing business in apartheid South Africa. Other campaigns have involved Northern Ireland and Angola (as a colony), and a campaign is currently underway at major universities to compel divestment from corporations doing business with Israel- a protest against that government's policies towards the Palestinians. The history of the South African divestment movement offers valuable lessons in the present conversion versus divestment discussion. The roots of the corporate divestment campaign were decades-long discussions within international church organizations. In 1977, the Reverend Leon Sullivan penned a model code of voluntary conduct for corporations doing business in South Africa, which quickly became known as the Sullivan Principles. The object of these Principles was to utilize the corporations as liberalizing agents within South Africa to break down apartheid.[101] The Sullivan Principles argued that change could best be accomplished through constructive engagement, and that the presence of American corporations ameliorated the harsher aspects of the apartheid economy.

The Sullivan Principles coincided with one of he largest student movement on college campuses since the Vietnam War. In the spring of 1977, student movements

demanding university divestment, climaxed by mass arrest sit-ins, took place on the Stanford, Berkeley, and Santa Cruz campuses in California.[102] By 1978, the movement had spread to Harvard and other Ivy League campuses. These movements collided with liberal university trustees and regents who advocated unrestricted constructive engagement, or embraced the Sullivan Principles as a reason to maintain investment portfolios in corporations active in apartheid South Africa. The debate resolved itself, both at home and in the South African liberation movement itself, into two camps - the Sullivan "constructive engagement" camp, and the divestment camp. In South Africa, conservative Zulus favored continued investment by U.S. corporations; others, such as Bishop Desmond Tutu, pointed out that the corporations were there for profit, not as engines of social change, and advocated divestment.[103] Advocates of divestment pointed out that the economic support of the corporations served to legitimize and bolster the repressive regime.[104]

In the end, the divestment movement won out over the advocates of continued engagement, so much so that Reverend Sullivan himself renounced the Sullivan Principles by 1987.[105] After the fall of the Botha regime, the official African National Congress history recognized the impact of the campus divestment movement on the international campaign to end apartheid.[106]

The South Africa divestment campaign presents useful lessons to the present situation involving the continuing relationship between the University of California and the nuclear weapons laboratories at Los Alamos and Livermore. In that campaign, the movement for the end of apartheid was confronted with the choice of "constructive engagement" versus divestment. Many sincere individuals argued passionately that continued investment by "progressive" US corporations was necessary to maintain "influence", "channels of communication" or to undertake incremental progress. Divestment advocates argued just as passionately that the continued presence of the American companies fed the regime and legitimized it. The divestment campaign ultimately prevailed, in no small part due to the clarity and conciseness of its message, which contained none of the moral ambiguities which plagued the "constructive engagers." In the final tally, "constructive engagement" by way of the Sullivan Principles had not yielded sufficient empirical data of positive influence necessary to overcome the burden of complicity with a discredited government.

The upcoming necessary discussion of DOE's decision to compete the prime management contract for LLNL and LANL must confront these same questions. Students, faculty and the interested public must inquire of the University of California or University of Texas whether such institutions of higher learning are truly compatible with running nuclear arms research and production facilities. As with apartheid, the continued development and stockpiling of new and "improved" nuclear weapons offends fundamental standards of international conduct and law. Universities which lend their name, prestige and resources to such activities violate the moral codes inherent in the

declared mission of such institutions. Any incremental moderating influence is outweighed by the legitimization of weapons research by association with a prestigious university.

Those who advocate the continuation of university management must be asked to empirically justify their conclusions. Has the University exerted a "moderating influence" on America's nuclear weapons development and policy? Has it facilitated or opposed the serious discussion of disarmament and conversion? Has the University demonstrated it is a better environmental manager, or been more protective of the health of workers or the public? We submit that in the main, the University of California's management has not measurably furthered these goals. It is no accident that the University's failure to meet environmental goals is matched by its failure to maintain secret information or maintain security at its facilities. The time to sever the University of California's relationship with the laboratories has come, and whether the product of government initiative or otherwise, it is eminently justified.

–Special Report for Western States Legal Foundation by Michael Veiluva, with contributions from Jacqueline Cabasso. Rev. 10/01/04

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69. July 10, 2003, Contract Reform: DOE's Policies and Practices In Competing Research Laboratory Contracts", Statement of Robin Nazzaro, Government Accounting Office, GAO-03-932T, page 8.

70. Id.

71. July 14, 2004, AP News Article, "History Meets Trouble At Los Alamos Lab", http://www.kentucky.com/mld/kentucky/9174517.htm

72. Transcript, U.S. House of Representatives, Hearings Before The Subcommittee On Oversight and Investigations, Committee On Energy and Commerce, No. 108-13, 2003 (GPO).

73. Id.

74. July 10, 2004, GAO-03-932-T, p. 8.

75. February 2004, *Department of Energy: Mission Support Challenges Remain at Los Alamos and Lawrence Livermore National Laboratories*, Government Accounting Office, GAO-04-370. The safety concerns are deemed more acute since 9/11. See April 2004, *Nuclear Security: DOE Needs To Resolve Significant Issues Before It Fully Meets The New Design Threat*, Government Accounting Office, GAO-04-623.

76. July 10, 2003, Contract Reform: DOE's Policies and Practices In Competing Research Laboratory Contracts", Statement of Robin Nazzaro, Government Accounting Office, GAO-03-932T, page 3.

77. November 24, 2003, U.S. Department of Energy, *Competing the Management and Operations Contracts for DOE's National Laboratories*, page 11-12. "The performance ratings... have, on occasion, served as a major embarrassment for the Secretary (of Energy) when major problems have been uncovered at laboratories that received high marks from both business management and conduct of scientific research on their annual performance evaluation. These inconsistencies have added to the distrust of the labs and the Department, and have resulted in the excessive micromanagement that now characterizes the Congress - DOE relationship."

78. Id.

79. July 23, 2004 Press Release, U.S. Department of Energy, at http://www.energy.gov

80. Evans, "Senator suggests 'missing' Los Alamos disks may not be missing; blames possible inventory foul-up," *Associated Press*, August 10, 2004, http:// www.sfgate.com/cgi-bin/article.cgi?f=/news/archive/2004/08/10/state2025EDT7595.DTL

81. July 22, 2004 editorial, "Just Another Breach," *The Economist.*

82. Schwellenbach, "UC Alone Did Not Ruin Los Alamos," *Daily Texan*, August 10, 2004, at http://www.dailytexanonline.com

83. July 23, 2004 Press Release, U.S. Department of Energy, at http://www.energy.gov **and Davidson, "Energy Czar Freezes Research At Arms Labs," *San Francisco Chronicle*, July 24, 2004.**

84. Parry, "Operations At Los Alamos On Hold For Two More Months," *Daily Californian*, August 9, 2004, http://www.dailycal.org/article.php?id=15785

85. Hoffman, "Lockheed Drops Bid For Los Alamos," supra.

86. Lawrence Livermore National Laboratory website, http://www.llnl.gov/OCM/FAQs/Roles.html

87. The current Los Alamos prime contract may be found at http://www.doeal.gov/LANLContractRecompete/Default.htm

88. November 24, 2003, U.S. Department of Energy, *Competing the Management and Operations Contracts for DOE's National Laboratories*, page 14.

89. Hoffman, *Oakland Tribune*, April 25, 2004, *supra.*

90. In Kirkpatrick Sale's book, *SDS*, Sale relates that among the first issues presented to Students for a Democratic Society (SDS) president Tom Hayden upon his emigration to California in the early 1960s was UC's relationship as manager of Lawrence Livermore National Laboratory.

91. See generally University of California at Berkeley, University Committee on Research Policy (UCORP), "Report of the University Committee on Research Policy On The University of California's Relations With The Department of Energy Laboratories, 1996, at http://scipp.ucsc.edu/~haber/UC_CORP/doelabs.html**. A December 2000 report of UCORP, however, was more equivocal and proposed a further task force to study the issue.** http://bartok.ucsc.edu/peter/labs/DOE.html

92. An excellent discussion of the UC management contract and whether the University can play a "moderating" influence took place in Berkeley, California, and may be viewed at http://teles.berkeley.edu:8080/ramgen/2002/special_events/gradassembly/doe_natlabs02.rm

93. As Sandia National Laboratory director C. Paul Robinson noted in his October 1999 testimony to the Senate Armed Services Committee on the ratification of the Comprehensive Test Ban Treaty:

> For example, if nuclear weapons emerge as the right answer to deter the use of other weapons of mass destruction in a regional conflict, the nuclear weapons we currently deploy may carry too high a yield and be far too disproportionate a response to be a credible deterrent. Proven designs of lower yield exist that might be adaptable for new military requirements in the future. I believe that such weapons could be deployed this way without the need for nuclear tests. (Statement of C. Paul Robinson to the U.S. Senate Armed Services Committee, October 7, 1999).

For detailed analysis of the Stockpile Stewardship program and its implications see *Faustian Bargain 2000: Why Stockpile Stewardship is Fundamentally Incompatible with the Process of Nuclear Disarmament,* Andrew Lichterman and Jacqueline Cabasso, Westerm States Legal Foundation (WSLF) April 2000 and *Looking for New Ways to Use Nuclear Weapons: U.S. Counterproliferation Programs, Weapons Effects Research, and*

"Mini-Nuke" Development, Andrew Lichterman, WSLF Information Bulletin, Winter 2000-2001, available at http://www.wslfweb.org/doclib.htm

94. See *Sliding Towards the Brink: More Useable Nuclear Weapons and the Dangerous Illusions of High-Tech War* Andrew Lichterman, WSLF information Bulletin, March 2003 and *Missiles of Empire: America's 21st Century Global Legions,* Andrew Lichterman, WSLF information Bulletin, Fall 2003, available at http://www.wslfweb.org/doclib.htm

95. Nuclear Posture Review, provided in "Nuclear Posture Review Excerpts," Global Security.org, at http://www.globalsecurity.org/wmd/library/policy/dod/npr.htm For a more detailed analysis of the Nuclear Posture Review and current U.S. nuclear weapons policies and their relationship to other high-tech weapons programs, see Andrew Lichterman and Jacqueline Cabasso, *The Shape of Things to Come: The Nuclear Posture Reivew, Missile Defense, and the Dangers of a New Arms Race*, Western States Legal Foundation special report, April 2002, http://www.wslfweb.org/docs/shape.pdf For additional information about the NPR from a variety of sources, see the WSLF NPR information page at http://www.wslfweb.org/nukes/npr.htm

94. Sterngold, "A New Era of Nuclear Weapons," *San Francisco Chronicle*, December 7, 2003.

95. Report, Department of Defense, Defense Science Board Task Force, *Future Strategic Strike Forces*, February 2004, page 18.

96. Reported at Friends Committee on National Legislation website, http://www.fcnl.org/issues/item.php?item_id=961&issue_id=2

97. Reported at Alliance for Nuclear Accountability website, http://www.ananuclear.org/action.html

98. See, e.g. John Burroughs, *The Legality of the Threat or Use of Nuclear Weapons: A Guide to the Historic Opinion of the International Court of Justice*, Transaction Publishers, 1998 (summary found at http://www.lcnp.org/wcourt/adlegalintro.htm)**, and Andrew Lichterman, "Missiles of Empire", Western States Legal Foundation Information Bulletin, Fall 2003, (found at** http://www.wslfweb.org/docs/missiles03.pdf**). John Burroughs is Executive Director of the Lawyers' Committee on Nuclear Policy in New York City, an attorney, and adjunct professor of international law at Rutgers Law School, Newark; Andrew Lichterman is an attorney and Program Director of the Western States Legal Foundation in Oakland, California.**

99. See *The End of Disarmament and the Arms Races to Come***,** Andrew Lichterman and Jacqueline Cabasso, *Social Justice* Vol. 29, No. 3, 2002 (WSLF reprint version) and *The So-called 'U.S. Record of Compliance': Why The U.S. Numbers Game Is Not Disarmament,* Andrew Lichterman and Jacqueline Cabasso, WSLF Information Bulletin Spring 2004, available at http://www.wslfweb.org/doclib.htm

100. See "United States Disarmament Obligations Under the Nuclear Non-Proliferation Treaty (NPT)", Western States Legal Foundation Fact Sheet, found at http://www.wslfweb.org/docs/nptfacsheet.pdf, **and "The So-Called 'U.S. Record of Compliance': Why the U.S. Numbers Game is Not Disarmament," Western States Legal Foundation Information Bulletin, Spring 2004, found at http://wslfweb.org/docs/uscompliance04.pdf**
See also Burroughs, supra.
See generally, N. Deller, A. Makhijani, and J. Burroughs, eds, *Rule of Power or Rule of Law? An Assessment of U.S. Policies and Actions Regarding Security-Related Treaties* Apex Press, 2003, and Burroughs, " Nuclear Non-Proliferation Treaty Compliance", IEER Conference: Nuclear Dangers and the State of Security Treaties, United Nations, New York, April 9, 2002, found at http://www.ieer.org/latest/npt02jb.html**.**

101. Geltman, et al., "Environmental Activism and the Ethical Investor," 22 *Journal of Corporate Law*, Spring 1997, 465.

102. http://www.stanford.edu/group/Thinker/v2/v2n1/SAfrica.html. **Also personal materials. See, e.g. *Stanford Daily*, May 10, 1977. The lead taken by Stanford students in the campus South Africa divestment movement is acknowledged by the Harvard Crimson at http://www.harvardsquarelibrary.org/mandela/20_conflicted_relationship.html. The Harvard Crimson noted that black students at Harvard initiated a divestment movement protesting Gulf Oil's presence in then Portugese-held Angola in 1972.**

Ironically, while many higher institutions in the 1980s abandoned the Sullivan Principles and adopted South African divestment platforms, the two universities that witnessed the beginning of the student South Africa divestment movement, UC and Stanford, were slow to adopt even the Sullivan Principles (the Stanford Trustees finally agreed in 1984). Stanford ultimately agreed to divest from a single company in 1986, after the issue of South African divestment entered into the realm of state and federal legislative discussion.

103. See e.g. Forcese, "Globalizing Decency: Responsible Engagement In An Era of Economic Integration," 5 Yale Human Rights and Development (2002), 1, 25-8, for a synopsis of the Sullivan Principles versus divestment debate.

104. Id.

105. Geltman, *supra.*

106. Houser, "The International Impact of the South African Struggle for Liberation," found at http://www.anc.org.za/ancdocs/history**. It states: "At Stanford University the Stanford Committee for a Responsible Investment Policy led the effort. A South African Catalyst Project was set up to help initiate and coordinate efforts on a large number of campuses in the western part of the United States. A Northeast Coalition**

for the Liberation of Southern Africa was organized in the east. Demonstrations, mass meetings, leaflet distribution, confrontation tactics with university administrators and trustees were actively pursued. And the universities began to respond. By 1979 at least 18 outstanding institutions of higher learning in the United States partly or wholly divested. On dozens of other campuses the issue dominated campus activity. Universities had seriously begun to deal with the issue for the first time."