APPENDIX A
ARGONNE TERMS AND CONDITIONS
(FOR COMMERCIAL ITEMS)

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1. ACCEPTANCE (OCT 1999)

Acceptance of this Purchase Order or contract (hereinafter called the "contract") must be in accordance with the terms and conditions limited to these Conditions of Terms and Conditions or any variations which may be agreed with the Laboratory. Failure to make an acknowledgment or acceptance which contains provisions conflicting or additional to these Terms and Conditions or which varies any term or condition shall have no force or effect. Performance of the contract without an effective acknowledgment shall be deemed to be performance in accordance with the Terms and Conditions of this contract.

2. INSPECTION (OCT 1999)

The contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Laboratory reserves the right to inspect or test any supplies or services that have been delivered or rendered, as the Laboratory may require and to provide for acceptance of supplies or performance of services by the contractor without an effective acknowledgment or acceptance which contains provisions conflicting or additional to these Terms and Conditions or which varies any term or condition shall have no force or effect. Performance of the contract without an effective acknowledgment shall be deemed to be performance in accordance with the Terms and Conditions of this contract.

3. ASSIGNMENT (OCT 1999)

Neither this contract nor any interest therein nor claim there under shall be assigned or transferred by the contractor except as expressly authorized in writing by the Laboratory; provided, that the contractor or its assignee's rights to be paid amounts due as a result of performance of this contract may be assigned to a bank, trust company or other financial institution, including any Federal lending institution. The Laboratory may assign this contract to a successor operator of the Laboratory.

4. CHANGES (OCT 1999)

Changes in the Terms and Conditions of this contract may be made only by written agreement of the parties EXCUSABLE DELAYS (OCT 1999)

The contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the contractor's reasonable control for which the contractor is not responsible. Such occurrence shall be God or the public enemy, acts of the Laboratory, acts of the Government in either its sovereign or commercial capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, or other long-established delays of common carriers. The contractor shall notify the Laboratory as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Laboratory of the cessation of such occurrence.

6. PAYMENTS (FEB 2004)

(a) Payment shall be made for items accepted by the Laboratory that have been delivered to the delivery destinations set forth in this contract. Upon the submission of proper invoices or vouchers, the Laboratory will make payment at the prices stipulated in this contract by check, electronic funds, or as the parties may otherwise agree. In connection with any discount offered for early payment, time shall be computed from the date the invoice is received by the Laboratory. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

(b) Property.

(1) Property shall mean all tangible personal property as identified in Argonne Form PD-150, Control of Government Property – Contractor Requirements, in the section entitled, “IDENTIFICATION” that has been purchased by the contractor in the performance of the contract for which the contractor is entitled to be reimbursed as a direct item of cost under this contract or for which the contractor has the cost for such property in the fixed price charged to the Laboratory.

(2) All INVOICES submitted under contracts which contain Argonne Form PD-150 Control of Government Property – Contractor Requirements, shall be accompanied by the complete form entitled, Argonne National Laboratory Subcontract Property Management Government Property Acquisition Records, ANL-561. THE LABORATORY WILL NOT ISSUE PAYMENT UNLESS A COMPLETED FORM ANL-561 IS INCLUDED WITHIN THE INVOICE. IF PROPERTY IS BEING INVOICED ON A PARTICULAR INVOICE OR NOT.

(c) Submission of Transportation Documents.

(1) The Contractor shall promptly address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that the Contractor paid:

(A) By the Contractor and added to the invoice for contractor supplied goods and/or services.

(B) By a first-tier subcontractor and added to the invoice for contractor supplied goods and/or services.

(2) Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding $200. Bills under $200 shall be retained on-site by the Contractor and made available for on-site audits.

(3) Contractors shall submit the above referenced transportation documents with Contractor's invoice to - Argonne National Laboratory, 9700 South Cass Avenue, Accounts Payable Building 201, Lemont, IL 60439.

7. BANKRUPTCY (JUL 1995)

In the event the contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish, by certified mail, written notification of the bankruptcy to the Laboratory documents required to be provided. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy to the Laboratory. This notification shall include the date on which the bankruptcy petition was filed, the date of the court in which the bankruptcy petition was filed, and a listing of Laboratory contract numbers for all Laboratory contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

8. RISK OF LOSS (OCT 1999)

Unless the contract specifically provides otherwise, risk of loss to the supplies or damage to the supplies provided under this contract shall remain with the contractor until the receipt of the supplies by the Laboratory or until the contractor's performance has been completed. The contractor shall be responsible for loss or damage to the supplies or services provided hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Prior to the final performance, the contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the contractor can demonstrate to the satisfaction of the Laboratory using the contractor's records. The terminated contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. The contractor shall provide the laboratory with adequate assurances of future performance. In the event of termination for cause, the Laboratory shall not be liable to the contractor for any amount for supplies or services not accepted, and the contractor shall be liable to the Laboratory for any and all costs reasonably incurred by it if it is determined that the Laboratory improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

10. TERMINATION FOR THE LABORATORY'S CONVENIENCE (OCT 1999)

The Laboratory reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Prior to the final performance, the contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the contractor can demonstrate to the satisfaction of the Laboratory using the contractor's records. The terminated contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. The contractor shall provide the laboratory with adequate assurances of future performance. In the event of termination for cause, the Laboratory shall not be liable to the contractor for any amount for supplies or services not accepted, and the contractor shall be liable to the Laboratory for any and all costs reasonably incurred by it if it is determined that the Laboratory improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

12. TITLE (OCT 1999)

Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Laboratory takes physical possession.

13. WARRANTY OF SUPPLIES (DEC 2011)

The contractor warrants that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

Energy Consuming Products

When the contract requires the specification or delivery of energy consuming products for use in Federal facility, the contractor will specify or deliver Energy Star® qualified products or products conforming to the Federal Energy Management Program's (FEMP) Energy Efficiency Requirements (www.eere.energy.gov/femp). If and when such products are not available and are life cycle cost effective and meet applicable standards, performance and requirement information about these products is available at: http://www.energystar.gov/products and FEMP at http://www.eere.energy.gov/femp/procurement/deep_requirements.cfm.

In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (http://www.epa.gov/energy/greeningfederalpractices/eo13423.htm) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (http://www.archives.gov/federal-register/executive-orders/6109.pdf). The Contractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic Performance. This guide includes information concerning recycled content products, bio-based products, energy efficient products, water efficient products, alternative fuels and vehicles, non ozone depleting substances and other environmentally preferable products and services. This guide is available on the Internet at: http://management.energy.gov/documents/AcqGuide23pt0Rev1.pdf

14. WARRANTY OF SERVICES (MAY 2001)

(a) Definitions. “Acceptance,” as used in this clause, means the act of an authorized representative of the Laboratory by which the Laboratory assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.

(b) Nonwithstanding inspection and acceptance by the Laboratory or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and performance to the requirements of this contract. The Laboratory Procurement Official shall give written notice of any defect or nonperformance to the Contractor. The Laboratory Procurement Official shall specify the defective work and direct the Contractor to correct or reperform the defective work. The Contractor, e.g., “within 30 days from the date of acceptance by the Laboratory,” within 1000 hours of use by the Laboratory, or within a period of time otherwise specified whose performance will otherwise be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Laboratory Procurement Official may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Laboratory thereby, or make an equitable adjustment in the contract price.

(c) If the Laboratory does not require correction or reperformance, the Laboratory Procurement Official shall make an equitable adjustment in the contract price.

15. LIMITATION OF LIABILITY (OCT 1999)

Except as otherwise provided by an express or implied warranty, the contractor will not be liable to the Laboratory for consequential damages resulting from any defect or deficiencies in accepted items.

16. CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (OCT 2010)

The contractor agrees to comply with the following FAR clauses, which are incorporated in this contract.

52.203-13, Contractor Code of Business Ethics and Conduct (APR 2010) (Pub. 1:119-252, Title VI, Chapter 1 (41 U.S.C. 251 note). If the subcontract exceeds $5,000,000 and has a performance period of more than 120 days in altering this clause to identify the appropriate part of the disclosure form to be completed and one of the Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

52.219-4, Notice of Disadvantaged Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $500,000, the subcontractor must include 52.219-4 in lower tier subcontracts that offer subcontracting opportunities.

52.222-25, Equal Opportunity (MAR 2007) (E.O. 11246).


The entire liability to the Government for infringement of a patent of the United States shall be for all other infringement to the extent of the authorization and consent herein above granted. 

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The contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract. 

In performing this contract the contractor shall comply with the requirements set forth in all applicable Federal and non-Federal environmental protection laws, codes, ordinances, Executive Orders, regulations and directives. 

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(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer a loss of income or would be subjected to any economic loss or deprivation.

(3) By means of the abuse or threatened abuse of authority or of legal process.

(4) Any scheme or plan, or pattern intended to cause the person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer a loss of income or would be subjected to any economic loss or deprivation.

(5) The abuse or threatened abuse of legal process.

(6) Severe forms of trafficking in persons:

(a) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.

(b) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(c) Policy. The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors and subcontractor employees shall:

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract;

(3) Use forced labor in the performance of the contract;

(d) Contractual requirements. The Contractor shall—

(1) Notify its employees of—

(i) The United States Government’s zero tolerance policy described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees or subcontractor employees that violate the policy in paragraph (b) of this clause.

(d) Notification. The Contractor shall inform the Contracting Officer immediately of—

(1) Any information it receives from the Department of State and other parts of the United States Government regarding host country law-enforcement actions that a Contractor employee, subcontractor employee, or subcontractor that is a publicly owned business, at least 51 percent of the stock of which is owned by one or more veterans; and

(2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for purposes of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

“Small disadvantaged business concern” means a small business concern that—

(1) Is owned and controlled by one or more small disadvantaged business concerns, as defined at 38 U.S.C. 4212(a); and

(2) Is certified on the date of its representation as a small disadvantaged business concern.

The Contractor shall—

(1) Notifying the Prime Contractor of—

(i) The information described in paragraph (a) of this clause; and

(ii) Any Subcontractor that is a publicly owned business, at least 51 percent of the stock of which is owned by one or more veterans; and

(2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for purposes of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Disadvantaged business concern” means a small business concern that qualifies as a small disadvantaged business concern.

(1) It is required to flow down to any subcontractor that is required to incorporate this clause when performing contracts let by any Federal agency, including contracts and subcontracts for small business concerns, small disadvantaged business concerns, and women-owned small business concerns. The subcontractor may flow down to any subcontractor that is required to incorporate this clause when performing contracts let by any Federal agency, including contracts and subcontracts for small business concerns, small disadvantaged business concerns, and women-owned small business concerns.
30. EXPORT LICENSE AGREEMENT (AUG 2002)

The contractor understands that the materials and/or information being transmitted under the performance of this contract may be subject to U.S. Government laws and regulations regarding export or re-export. This includes deemed exports which are any communication of technical data to a foreign national, whether it takes place by technical data itself, technical data in source code, technical data in object code, technical data in machine-readable form, technical data in source code data provided to a foreign national verbally, by mail, by facsimile, through visits or workshops, or through computer networking to a foreign national. If a foreign national observes equipment, or monitors a process, it may constitute an export of technical data, if significant details are revealed. It is solely the contractor’s obligation to obtain all appropriate export licenses, keep required records, and comply with all export control laws and regulations. The contractor shall be solely liable for any violation of export control statutes or regulations, and shall indemnify and hold the Department of Energy, UC/Chicago Argonne, LLC, and the Laboratory harmless from any liability that may arise for any such violation.

31. EXPORT CONTROL INFORMATION FOR FOREIGN TRAVEL (NOV 2002)

The United States is committed to encourage technology exchanges that are consistent with U.S. national security, nuclear nonproliferation, and foreign policy goals. Prior to transfer, verify that the technology, information, and/or commodities fall into one or more of the following categories:

- Export Control:
  - Export control regulations require that all items, data, and services subject to export control must be protected.
  - Items, data, and services subject to export control are not available for public disclosure.
  - Items, data, and services subject to export control must be protected at the contractor's expense.
  - Items, data, and services subject to export control must be protected by a contractor-owned license or regulation.
- Export Control:
  - Export control regulations require that all items, data, and services subject to export control must be protected.
  - Items, data, and services subject to export control are not available for public disclosure.
  - Items, data, and services subject to export control must be protected at the contractor's expense.
  - Items, data, and services subject to export control must be protected by a contractor-owned license or regulation.

If the information, technology, and/or commodities do not fall into one of these categories, please contact the Export Control Office at Argonne to determine whether a license is required prior to export. To further ensure that you do not run the risk of exporting sensitive information or technology when traveling abroad, keep the following guidelines in mind that without having acquired all export license prior to travel, presentations and discussions must be limited to output that is not on the DOE Sensitive Subjects List and the Argonne Sensitive Technologies and not related to controlled items or technologies unless they are in the public domain. Further elaboration, or additional details, may be considered an export of technologies and need an export license prior to release.

32. WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)

(a) Definition. As used in this clause—
(b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts of $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

33. PROTECTING THE GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (DEC 2010)

Applicability: This clause applies to all subcontracts with a value in excess of $100,000 unless exempted by rules, regulations, or orders of the Secretary of Labor.

34. VEHICLE LIABILITY INSURANCE COVERAGE (AUGUST 2001)

In the event a Government or Laboratory vehicle (including Laboratory-rented vehicle) will be utilized by a contractor during the course of this contract, contractor agrees to obtain and maintain appropriate levels of automobile liability coverage for property damage and bodily injury and such insurance shall be primary.

35. ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2013)

ÔDriving” means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or other compelling reason to do so.

36. INTEGRATION CLAUSE (OCT 1999)

This clause represents the full understanding of the parties and is the entire agreement between the parties. All negotiations between the parties have been merged into the contract and there are no understandings or agreements other than those incorporated into this contract.

37. PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) “Segregated facilities,” as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage, dressing or storage areas, transportation, and housing facilities provided for employees, that are segregated by race, color, religion, sex, or national origin because of race, color, religion, sex, or national origin.

(b) The contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities.

(c) The contractor shall include in this clause in each subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

38. EMPLOYMENT REPORTS VETERANS (SEPT 2010)

This clause applies to all subcontracts with a value in excess of $100,000 unless exempted by rules, regulations, or orders of the Secretary of Labor.

39. NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2013)

Applicability: This clause applies to all subcontracts with a value in excess of $100,000 unless exempted by rules, regulations, or orders of the Secretary of Labor.

40. PHYSICAL PROOF OF EMPLOYEE IDENTIFICATION (NOV 2002)

(a) The Contractor shall provide a method of identification for each contractor employee.

(b) The Contractor shall select an ending date—

(c) The Contractor shall retain the data element for the contractor to the extent allowed by the National Labor Relations Act.

(d) The Contractor shall provide a method of identification for each contractor employee.

(e) The Contractor shall provide a method of identification for each contractor employee.

(f) The Contractor shall provide a method of identification for each contractor employee.

(g) The Contractor shall provide a method of identification for each contractor employee.

(h) The Contractor shall provide a method of identification for each contractor employee.

(i) The Contractor shall provide a method of identification for each contractor employee.

(j) The Contractor shall provide a method of identification for each contractor employee.

(k) The Contractor shall provide a method of identification for each contractor employee.

(l) The Contractor shall provide a method of identification for each contractor employee.

(m) The Contractor shall provide a method of identification for each contractor employee.

(n) The Contractor shall provide a method of identification for each contractor employee.

(o) The Contractor shall provide a method of identification for each contractor employee.

(p) The Contractor shall provide a method of identification for each contractor employee.

(q) The Contractor shall provide a method of identification for each contractor employee.

(r) The Contractor shall provide a method of identification for each contractor employee.

(s) The Contractor shall provide a method of identification for each contractor employee.

(t) The Contractor shall provide a method of identification for each contractor employee.

(u) The Contractor shall provide a method of identification for each contractor employee.

(v) The Contractor shall provide a method of identification for each contractor employee.

(w) The Contractor shall provide a method of identification for each contractor employee.

(x) The Contractor shall provide a method of identification for each contractor employee.

(y) The Contractor shall provide a method of identification for each contractor employee.

(z) The Contractor shall provide a method of identification for each contractor employee.
the Department of Labor’s Web site that contains the full text of the poster. The link to the Department’s Web site, as referenced in (b)(3) of this section, must read: “Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers.”

(b) This required employee notice, printed by the Department of Labor, may be:

(1) Obtained from the Division of Interpretations and Standards, Office of Labor Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-N569, Washington, DC 20210-0323, or from the field the Office of Labor Management Standards or Office of Federal Contract Compliance Programs;

(2) Provided by the Federal contracting agency if requested;

(3) Downloaded from the Office of Labor Management Standards Web site at www.dol.gov/olms/egov/ebu/e2494.html or;

(4) Reproduced and used as exact duplicate copies of the Department of Labor’s official poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 4a.14 and subpart 9.4. Each Contractor is responsible for ensuring such provisions, including the imposition of sanctions for noncompliance.

(f) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

40. NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS - EXECUTIVE ORDER 13496: (APRIL 2010)

(Applies to contracts equal to or greater than $10,000)

Federal contractors and subcontractors are required to inform employees of their rights under the Federal Labor Relations Act (FLRA), the primary law governing relations between unions and employers in the private sector. See 29 CFR Part 471. The notice, prescribed in the Department of Labor’s regulations, informs employees of Federal contractors and subcontractors of their rights under the FLRA to organize and bargain collectively with their employers and to engage in other protected concerted activity. Additionally, the notice provides examples of illegal conduct by employers or unions, and it provides contact information for the Federal Labor Relations Authority (www.flra.gov), the agency responsible for enforcing the NLRA. Federal contractors and subcontractors are required to provide a prescribed employee notice conspicuously in plants and offices where employees covered by the NLRA contract perform-related activity, including all places where notices to employees are customarily posted both physically and electronically.

(f) Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(3) of this section);

(i) All new employees.


If you are not able to download the notice, or if you seek a hard copy of the notice, you can send a request to olms-public@dol.gov or call (202) 693-0123. Contractors may also reproduce and use as exact duplicate copies of the Department of Labor’s official poster.

41. EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009)

Applies to:

(i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item; or

(1) Commercially available off-the-shelf (COTS) item—

(a) Means any item of supply that is—

(i) A commercial item (as defined in paragraph (1) of the definition at 2.101),

(ii) Sold in substantial quantities in the commercial marketplace, and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace;

(b) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1894 (46 U.S.C. App. 1702), such as agricultural products and petroleum products. Per 42 CFR 65.2, “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, if a loose unpackaged form, having homogeneous characteristics. Bulk cargo may include, but is limited to, intermodal equipment, except LASH or Seabee barges, is subject to mark and count, and, therefore, ceases to be bulk cargo.

“Employee assigned to the contract” means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to be delivered to the Department of Homeland Security (DHS) or the Social Security Administration (SSA) or both, the Department of Labor (DOL), or another Federal agency.

(j) The Contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(k) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (j) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 4a.14 and subpart 9.4. Each Contractor is responsible for enforcing such provisions, including the imposition of sanctions for noncompliance.

(l) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

42. TECHNICAL STANDARDS PROGRAM (FEB 2011)

This article applies if any Contractor personnel participate in development, review or selection activities related to DOE Technical Standards:

1. In the performance of the work, the Contractor, when participating in the development of Department of Energy (DOE) Technical Standards, conducting technical standards review activities, and selecting technical standards for use to support assigned DOE missions and functions, must:

- Select, use, and adhere to appropriate voluntary consensus standards (VCSs), except where use of VCSs is inconsistent with law or impractical. (Note: VCSs are defined as standards developed or adopted by voluntary consensus standards bodies, both domestic and international.)

2. Use, and adhere to appropriate voluntary consensus standards (VCSs), except where use of VCSs is inconsistent with law or impractical. (Note: VCSs are defined as standards developed or adopted by voluntary consensus standards bodies, both domestic and international.)

3. Participate in appropriate development and review of those DOE Technical Standards where the contractor has technical or programmatic interests, or where participation may be required by contract.

4. Review participation in VCS activities conducted in support of DOE missions and functions through the Laboratory Technical Standards Manager in The Office of Contract Administration (OA). [Use Form DOE F 1300.2 (DOE 05/2010)]

5. Report participation in VCS activities conducted in support of DOE missions and functions through the Laboratory Technical Standards Manager in The Office of Contract Administration (OA). [Use Form DOE F 1300.2 (DOE 05/2010)]

6. Use, and adhere to appropriate voluntary consensus standards (VCSs), except where use of VCSs is inconsistent with law or impractical. (Note: VCSs are defined as standards developed or adopted by voluntary consensus standards bodies, both domestic and international.)
Notwithstanding any other provisions of this agreement, the contractor warrants that all items provided to the Laboratory shall be genuine, new and unused unless otherwise specified in writing by the Laboratory. Contractor further warrants that all items used by the contractor during the performance of work at the Argonne National Laboratory include all genuine, original, and new components, or are otherwise suitable for the intended purpose. Furthermore, the contractor shall indemnify the Laboratory, its agents, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts that are not genuine, original, and unused, or not otherwise suitable for the intended purpose. This includes, but is not limited to, materials that are defective, suspect, or counterfeit; materials that have been provided under false pretenses; and materials or items that are materially altered, damaged, deteriorated, degraded, or result in product failure.

Types of material, parts, and components known to have been misrepresented include (but are not limited to) fasteners; hoisting, rigging, and lifting equipment; cranes; hoists; valves; pipe and fittings; electrical equipment and devices; plate, bar, shapes, channel members, and other heat treated materials and structural items; welding rod and electrodes; and computer memory modules. The contractor's warranty also extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to the Laboratory. In addition, because falsification of information or documentation may constitute criminal conduct, the Laboratory may reject and retain such information or items, at no cost, and identify, segregate, and report such information or activities to cognizant Department of Energy officials.
# Suspect/Counterfeit Part

## Headmark List

### Grade 5 Fasteners

<table>
<thead>
<tr>
<th>Mark</th>
<th>Manufacturer</th>
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<tbody>
<tr>
<td>J</td>
<td>Jinn Her (TW)</td>
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### Grade 8 Fasteners

<table>
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<tr>
<th>Mark</th>
<th>Manufacturer</th>
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<tbody>
<tr>
<td>KS</td>
<td>Kosaka Kogyo (JP)</td>
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### Grade 8 Fasteners with Following Manufacturers' Headmarks

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<thead>
<tr>
<th>Mark</th>
<th>Manufacturer</th>
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<tbody>
<tr>
<td>A</td>
<td>Asahi Mfg. (JP)</td>
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<tr>
<td>NF</td>
<td>Nippon Fasteners (JP)</td>
</tr>
<tr>
<td>H</td>
<td>Hinomoto Metal (JP)</td>
</tr>
<tr>
<td>M</td>
<td>Minamida Sieybo (JP)</td>
</tr>
<tr>
<td>MS</td>
<td>Minato Kogyo (JP)</td>
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<tr>
<td>E</td>
<td>Daiel (JP)</td>
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### Grade 8.2 Fasteners

<table>
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<tr>
<th>Mark</th>
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<tbody>
<tr>
<td>KS</td>
<td>Kosaka Kogyo (JP)</td>
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### Grade A325 Fasteners

<table>
<thead>
<tr>
<th>Type</th>
<th>Mark</th>
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</thead>
<tbody>
<tr>
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<td>A325</td>
<td>Kosaka Kogyo (JP)</td>
</tr>
<tr>
<td>2</td>
<td>A325</td>
<td>Kosaka Kogyo (JP)</td>
</tr>
<tr>
<td>3</td>
<td>A325</td>
<td>Kosaka Kogyo (JP)</td>
</tr>
</tbody>
</table>

Headmarkings are usually raised - sometimes indented.

**Key:** CA-Canada, JP-Japan, TW-Taiwan, YU-Yugoslavia

Any bolt on this list should be treated as defective without further testing. Or, if you see any indication that a circuit breaker may be used or refurbished, see: [http://www.saftek.com/worksafe/bull82.txt](http://www.saftek.com/worksafe/bull82.txt)