APPENDIX A

ARGONNE TERMS AND CONDITIONS

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1. ACCEPTANCE (OCT 1999)

Acceptance of this Purchase Order or contract [hereinafter called the "contract"] must be in accordance with and strictly limited to these Terms and Conditions. An attempted acknowledgment of acceptance which contains provisions, limitations or additions to these Terms and Conditions or which varies any term or condition shall have no force or effect. Performance by the contractor 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 tendered for acceptance. The Laboratory may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The contractor shall be responsible for any cost resulting from such nonconformance.

3. ASSIGNMENT (OCT 1999)

Neither this contract nor any interest therein nor claim thereunder 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 financing institution, including any Federal lending institution. The Laboratory may assign this contract to a successor operator of the Laboratory.

4. CHANGES (JUNE 2007)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes in:

1. The specifications (including drawings and designs);
2. The method or manner of performance of the work;
3. The Government's requirements for the work;
4. Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, request, or determination of the Contracting Officer that causes a change) shall be treated as a change order under this clause. Provided, that the contractor gives the Contracting Officer written notice stating that:

1. The date, circumstances, and source of the order;
2. That the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change order under this clause or entitle the contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost or the time required for, the performance of any part of the work under this contract, whether or not ordered by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for a change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include increased costs and increased expenses incurred by the contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after:

1. Receipt of a written change order under paragraph (a) of this clause or the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal; and
2. Unless the period is extended by the Government, the statement of proposal for adjustment may be included in the notice under paragraph (b) of this clause.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

5. EXCUSEABLE DELAYS (OCT 1999)

The contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the contractor and without its fault or negligence such as, acts of God or war, fire, flood, earthquake, acts of the Government in excess of its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather conditions, and any other event or condition beyond the reasonable control of the contractor;

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 shall 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 at the Laboratory. For the purpose of computing the discount earned, payment shall be considered to have been made on the date the check or payment 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 cost is to be reimbursed as a direct item of cost under this contract or for which the contractor has included the cost for such property in the contract and approved by 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 completed form entitled, Argonne National Laboratory Subcontract Property Management Government Property Acquisition Record, ANL-661. THE CONTRACTOR WHO SUBmits A COMPLETED FORM ANL-661 IS INCLUDED WITH ALL INVOICES REGARDLESS IF PROPERTY IS BEING INvoiced ON A PARTICULAR INVOICE OR NOT.

(c) Submission of Transportation Documents

(1) The Contractor shall submit to the address identified below, for prepaid audit, transportation documents for the United States only which require freight charges that were 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 $500. Bills under $200 shall be retained on-site by the Contractor and made available for on-site audits.

(3) Contractors shall submit the 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, by certified mail, written notification of the bankruptcy to the Laboratory Procurement Official responsible for administering the contract. This notification shall be furnished within five (5) days of the intimation of the proceedings relating to bankruptcy filing. The notification shall include the date on which the bankruptcy petition was filed, and a listing of Laboratory contract numbers for which the contractor is responsible 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 or damage to the supplies provided under this contract shall remain with the contractor until, and shall pass to the Laboratory upon:

(a) Delivery of the supplies to a carrier, if transportation is f.o.b. origin, or

(b) Delivery of the supplies to the Laboratory at the destination specified in the contract, if transportation is f.o.b. destination.

9. TAXES (OCT 1999)

The contract price includes all applicable Federal, State, and local taxes and duties.

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 return all supplies and materials to the Laboratory. If the contractor improperly terminates this contract for convenience, such termination shall be deemed a default under this contract, and the contractor shall be liable to the Laboratory for any and all rights and remedies provided by law. 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.

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.

(c) 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.

(d) 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 by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (APR 2010) (Pub. L. 110-252, Title II, Chapter 1 (41 U.S.C. 531 notes)), if the contract price exceeds $500,000.

(ii) 52.203-14, Limited Use of Small 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 ($1,500,000 for construction of a public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

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


(vii) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)). Alternate I (MAR 2007) of 52.222-55 (22 U.S.C. 7104(g)).


(x) 52.222-54, Employment Eligibility Verification (Jan 2009).

(xi) 52.222-6, Promoting Excess Food Donation to Nonprofit Organizations. (MAR 2009) (Pub. L. 110-246).

(xii) 52.247-4, Preference for Privately Owned U.S.-Flag Commercial Vessels (February 2006) (46 U.S.C. Appx 12410) and (10 U.S.C. 2653). Flow down required in accordance with Paragraph (i) of FAR clause 52.212-7.

17. OTHER COMPLIANCES (OCT 1999)

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

18. ENVIRONMENTAL PROTECTION (OCT 1999)

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.

19. ENERGY EFFICIENCY IN CONSUMING-PRODUCTS CONTRACT (DEC 2007)

(a) Definition. As used in this clause—

"Energy-efficient product"—

(i) Means a product that—

(A) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

(B) Is in the upper 25 percent of efficiency of all similar products as designated by the Department of Energy’s Federal Energy Management Program.

(ii) The term "product" does not include any energy-consuming product or system designed or procured for combat or combat-related missions (40 U.S.C. 3301).

(b) The Contractor shall ensure that energy-consuming products are energy efficient products (i.e., ENERGY STAR® products or FEMP-designated products) at the time of contract award, for products that are—

(1) Delivered;

(2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(3) Furnished by the Contractor for use by the Government; or

(4) Specified in the design of a building or work, or incorporated during its construction, renovation, or modification.

(c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless—

(1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP;

(2) Otherwise approved in writing by the Contracting Officer.

(d) Information about these products is available at: http://www1.eere.energy.gov/products/fcp/femp_energy_efficiency.html

20. NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

(a) The Contractor shall notify the Laboratory Procurement Representative or designer, in advance, when applicable, prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either

(1) Radiactive materials requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1946, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or

(2) Other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.001 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government or the Laboratory shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(b) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

21. AUTHORIZATION AND CONSENT (DEC 2007)

The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by United States patent(s) (except a patent issued upon an application that is now or may hereafter be withdrawn from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as “construction work”) under this contract, or out of the use or disposal of or for the account of the Government or the Laboratory or any lower-tier subcontractor.

The entire liability to the Government for infringement of a patent of the United States shall be limited to the payment of any royalties to which this clause applies, and the Government assumes liability for all other infringement to the extent of the authorization and consent herein granted.

22. PATENT INDEMNITY - SUPPLIES AND SERVICES (APR 1984)

(a) The Contractor shall indemnify the Laboratory, the Government and their officers, agents, and employees against all actions and claims for infringement of any United States patent(s) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as “construction work”) under this contract, or out of the use or disposal of or for the account of the Government or the Laboratory or any lower-tier subcontractor.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government (with notice to the Laboratory) of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to:

(i) An infringement resulting from compliance with specific written instructions of the Laboratory or of a Government designated representative.

(ii) Any use of the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor.

(iii) A claimed infringement that is unreasonably unsettled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

23. REFUND OF ROYALTIES (AUG 2002)

(a) During performance of this Contract, if any royalties are proposed to be charged to the Laboratory or the Government as costs under this Contract, the Contractor agrees to submit for approval the Government through the Laboratory, prior to the execution of any license, the following information relating to each separate item of royalty:

(1) Name and address of licensor;

(2) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;

(3) Description, including any part or model numbers of each contract item or component on which the royalty is payable;

(4) Percentage of sale or royalty rate per unit;

(5) Unit price of contract item;

(6) Number of units;

(7) Total dollar amount of royalties; and

(8) A copy of the proposed license agreement.

(b) If specifically requested by the Government through the Laboratory, the Contractor shall furnish a copy of any license agreement entered into prior to the effective date of this clause and an identification of applicable claims of specific patents or other basis upon which royalties are payable.

(c) The term “royalties” as used in this clause refers to any costs or charges in the nature of royalties, license fees, rental, license amortization costs, or the like, for the use of or for rights in patents and patent applications that are used in the performance of this contract or any subcontract hereunder.

(d) The Contractor shall furnish to the Government through the Laboratory, annually upon request, a statement of royalties paid or required to be paid in connection with performing this Contract and subcontracts hereunder.

(e) For royalty payments under licenses entered into after the effective date of this Contract, costs incurred for royalties proposed under this paragraph shall be allowable only to the extent such royalties are approved by the Government. The Government determines that existing or proposed royalty payments are inappropriate, any payments subsequent to such determination shall be allowable only to the extent approved by the Government.

(f) Regardless of prior Government or Laboratory approval of any individual payments or royalties, the Government may consent at any time the enforceability, validity, scope of, or title to a patent for which the Contractor makes a royalty or other payment.

(g) If at any time within three years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of any royalties to which this clause applies, the Contractor shall promptly notify the Government through the Laboratory of such relief.

(h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitable to the circumstances at the parties in any subcontracts for the time in which the amounts of royalties reported during negotiation of the subcontract exceeds $250.

24. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)

The provisions of this clause shall be applicable only if the amount of this contract exceeds $100,000.

(a) The Contractor shall report to the Government through the Laboratory, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) If any such notice or claim is based on a claim of any alleged patent or copyright infringement arising out of the performance of this contract or of a subcontract at any tier, the Contractor shall furnish to the Government, when requested by the Government or the Laboratory, all evidence and information in possession of the Contractor pertaining to such suit or claim. Except where the Contractor has agreed to indemnify the Government under this clause, the Contractor shall furnish such evidence and information at the expense of the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontracts at any tier expected to exceed $100,000.

25. COMBATTING TRAFFICKING IN PERSONS (FEB 2009)

(a) Definitions. As used in this clause—
“Coercion” means—
(i) Threats of serious harm or to physical restraint against any person;
(ii) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm or to physical restraint against any person;
(iii) The abuse or threatened abuse of the legal process.
“Commercial sex act” means any sex act on account of which anything of value is given or received by any person.
“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as security for debt, or delay in payment of one or more of the services so pledged, if the debt is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited by a written contract.
“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.
“Forbiden labor” means an activity engaged in conduct that violates the United States’ government’s zero tolerance policy described in paragraph (b) of this clause; and
(i) Any violation of export control statutes or regulations, and shall indemnify and hold the Department of Energy harmless for any violation of the export control laws and regulations, and shall indemnify and hold Argonne harmless for any violation of the export control laws and regulations.
(ii) 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 foreigner, whether in the United States or abroad. Technical data (data provided to a foreign national verbally, by mail, by telephone or facsimile, through visits or workshops, or through computer networking is an export. If a foreign national observes equipment or any written or oral materials containing technical data, it is deemed an export. It is solely the contractor’s obligation to obtain all appropriate export licenses, keep records, and comply with all export control requirements. A contractor, subcontractor, or subcontractor’s employee is required to obtain and maintain appropriate export licenses. For assistance in preparing a request, contact the Argonne Technical Investigator associated with your activity.
(iii) Activity Participation
For assignments (more than 30 days) involving a foreign national from a “Sensitive Country”, the Laboratory must abide by all of the export control laws and regulations. An export can occur through a variety of means, including oral communications, written documentation, or transfer of tangible items. Foreign nationals, or a process, may constitute an export of technical data, if significant details are revealed. It is the contractor’s obligation to obtain all appropriate export licenses, keep records, and comply with all export control requirements. A contractor, subcontractor, or subcontractor’s employee is required to obtain and maintain appropriate export licenses. For assistance in preparing a request, contact the Argonne Technical Investigator associated with your activity.
(iv) 52.222-40, Notice of帀ppliance Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.247-64.
(v) 52.247-25, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).
(vi) 52.247-10, Domestic Violence and Sexual Assault Prevention (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 5631), if flow down is required in accordance with paragraph (f) of FAR clause 52.247-64.
(2) While not required, the Contractor may flow down this clause to subcontractor items with a minimal number of additional clauses necessary to satisfy its contractual obligations.
(d) The Contractor shall insert the terms of this clause, including this paragraph (d), in subcontracts issued under this contract.

27. LABORATORY SITE ACCESS AND/or PARTICIPATION IN ACTIVITIES BY NON-U.S. NATIONALS (DEC 2004)

Site Access
Site access, including cyber access utilizing a Laboratory account, by all non-U.S. citizens must be reviewed by the Laboratory. Direct access to Laboratory computer systems is allowed. All new requests must be submitted on Form ANL-593. Non-U.S. citizens are either visitors (on site for up to 30 days or less) or assignees (on site for more than 30 days in a 12-month period). A certified host must be assigned for each request. Hosts shall be selected so far as is feasible as a minimum of 30 days for a sensitive assignment, 7 days for a non-sensitive country assignment or 0 days for a non-sensitive country assignment.

For assignments (more than 30 days) involving a foreign national from a “Sensitive Country”, and/or access to a security area of the Laboratory or access to a sensitive subject, at least 30 days advance notice should be provided to ensure that Security, Counterintelligence, and Export Control reviews can be accomplished, and a DOE indices check can be completed prior to approval. In such cases, a specific security plan is required to be submitted to the Foreign Visits and Assignments Office with the ANL-593 form requesting the visit by the Hosting Division. An indices check normally takes 30 days after completion of all required pre-clearance documents, but can take considerably longer (once obtained, an indices check is valid for two years).

For visits or assignments involving a foreign national from a “Teritorial Supporting Country”, for foreign nationals from a “Primary Supporting Country”, and/or participation in activities with Argonne National Laboratory. The requirement is to be flowed down to all subcontractors at any tier.

28. 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 foreigner, whether in the United States or abroad. Technical data (data provided to a foreign national verbally, by mail, by telephone or facsimile, through visits or workshops, or through computer networking is an export. If a foreign national observes equipment or any written or oral materials containing technical data, it is deemed an export. It is solely the contractor’s obligation to obtain all appropriate export licenses, keep records, and comply with all export control requirements. A contractor, subcontractor, or subcontractor’s employee is required to obtain and maintain appropriate export licenses. For assistance in preparing a request, contact the Argonne Technical Investigator associated with your activity.

29. EXPORT CONTROL INFORMATION FOR TRAVEL (NOV 2002)

The United States is committed to encouraging technology exchanges that are consistent with U.S. national security and nuclear nonproliferation objectives. Much of the work Argonne and its employees undertake to further its research and technology development mission is exempt from U.S. export control regulations, the Laboratory must abide by all of the export control laws and regulations to ensure its compliance with all controls. An export can occur through a variety of means, including oral communications, written documentation, or transfer of tangible items. Technology transfers to foreign nationals while they are visiting the United States or other countries or while you are visiting their country are considered exports. You and the Laboratory can be held liable for improperly transferring controlled technologies.

Prior to traveling, verify that the technology, information, and/or commodities fall into one or more of the following categories:
• Fundamental research and information resulting from fundamental research
• Published information and software (publically available) education information

If the information, technology, and/or commodities do not fall into one of these categories, please contact the Export Control Manager at Argonne to determine if 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 an export license prior to your trip, prospective exporters should review the topics that are 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.

30. WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)

(a) The contractor shall comply with the requirements of the “DOE Contractor Employee Protection Program” at 10CFR Part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or DOE-leased sites.
(b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontractors involving work performed on behalf of DOE directly related to activities at DOE-owned or DOE-leased sites.

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

Applies To Contracts That Exceed $30,000 In Value
(a) Definition. “Commercially available off-the-shelf (COTS) item,” as used in this clause—
(i) Means any item of supply (including construction material) that is—
(A) A component or subcomponent as defined in FAR 2.101;
(B) Sold in substantial quantities in the commercial marketplace; and
(ii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

(b) The Government suspends or debarres Contractors as provided by 41 CFR 60-300.4, entitled "Federal Contractor Veterans' Employment Report (VETS-100A)".

(c) The Contractor shall include the above items in completing the Form VETS-100A, entitled "Federal Contractor Veterans' Employment Report (VETS-100A)".

(d) The contractor shall report all numbers from the above items in completing the Form VETS-100A, entitled "Federal Contractor Veterans' Employment Report (VETS-100A)".

(e) The employment activity report required by paragraphs (b)(2) and (c) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date:

(1) As of the end of any pay period between July 1 and August 31 of the year the report is submitted to the Labor Office of Federal Contract Compliance Programs; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Opportunity Director for the Labor Office of Federal Contract Compliance Programs to submit the Employer Information Report EEO-1 (Standard Form 100).

(f) The Contractor shall submit the form to the Department of Labor, Office of Federal Contract Compliance Programs, Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Federal Contract Compliance Programs;

(g) The contractor shall also post the required notice electronically by displaying 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 Employer\n
(h) 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 N-6009, Washington, DC 20210, (202) 693-0123, or from any field office of the 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 http://www.dol.gov/olms/reg/compliance/EO13496.htm; or

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

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

(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) and (b) 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 471.14 and subsection 9.4 of such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(l) Subcontracts

(1) The Contractor shall include the substance of this clause, including this paragraph (l), in every subcontract that exceeds $10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.

(2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.

(m) The Contractor agrees to incorporate this clause to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

(4) 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.

38. NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS - EXECUTIVE ORDER 13496: (APR 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 National Labor Relations Act (NLRA), the primary law governing relations between unions and employers in the private sector. This Executive Order, entitled "Executive Order 13496 of January 30, 2009," requires that such provisions will be binding upon each subcontractor. Federal contractors and subcontractors are required to post the prescribed employee notice conspicuously in places where employees covered by the NLRA perform contract-related activity, including all places where notices to employees are customarily posted both physically and electronically. Obtaining Copies of the Notice of Employee Rights

Executive Order 13496 Notice of Employee Rights: Adobe Reader (pdf) format, can be downloaded from the link:


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 exact duplicate copies of the official notice.

Notice of Employee Rights Under Federal Labor Laws - 11x17-inch one-page format (PDF)

Notice of Employee Rights Under Federal Labor Laws - 11x8.5-inch two-page format (PDF)
39. EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009)

Applies to:
(1) 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 sold for that COTS item; or

(ii) Construction;

(2) Has a value of more than $3,000; and

(iii) Includes work performed in the United States.

(a) Definitions. As used in this clause:
"Commercially available off-the-shelf (COTS) item"—
(1) 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; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products. Per 46 CFR 525.10-2(a), "bulk cargo" means cargo that is loaded and carried in bulk onboard ship without mark or count, off loading is done on board a vessel using unloading equipment that has homogenous characteristics. Bulk cargo loaded into 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 requires the contractor to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee—
(1) Normally performs support work, such as indirect or overhead functions; and
(2) Does not perform any substantial duties applicable to the contract.

"Subcontractor" means any subcontractor, as defined in 2.103, entered into by a prime Contractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

"Supplier" means any supplier, distributor, vendor, or firm that furnishes supplies or services in connection with or to a prime Contractor or subcontractor to furnish supplies or services for performance of a primary contract or a subcontract.

"Contractor" includes a contractor, as defined in 2.103, entered into by a Federal Contractor to furnish supplies or services for performance of a Federal contract or a subcontract. The contractor includes any entity that in turn may subcontract to furnish supplies or services for performance of a contract.

"The United States," as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

(b) Enrollment and verification requirements:
(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—
(i) Enroll. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) Verify all new employees. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) Notify employees assigned to the contract. For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 90 calendar days of the first date of hire, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of

(i) All new employees.

(A) Enrolled 90 days or more. The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) 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 90 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements of (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) Option to verify employment eligibility of all employees. The Contractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor’s decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor’s MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause, if the suspension or debarment decision is still pending.

(c) Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: http://www.dhs.gov/E-Verify.

(d) Individuals previously verified. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or


40. 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 this contract, 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 expectations, must—

2. 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.)

3. Participate as appropriate in development and review of those DOE Technical Standards where the contractor has technical or programmatic interests, or will be affected by the content of DOE Technical Standards under development, or as directed by the Contracting Officer.

4. Designate and provide support for a coordinator for technical standards activities, including identification of the appropriate Subject Matter Experts to review draft DOE Technical Standards.

5. Report participation in VCS activities conducted in support of DOE missions and functions through the Deputy Director, Technical Standards Manager in The Office of Contract Administration (COA). [See Form DOE F 1300.2 (02/2010)].

6. Flow down this requirement to subcontractor(s) at any tier to the extent necessary to ensure the contractor’s compliance with these requirements.

41. SUSPECT COUNTERFEIT PARTS (DECEMBER 2007)

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 this contract shall be genuine, new, unused, or not otherwise suitable for the intended purpose. Furthermore, the contractor shall certify to 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 materials, parts, and components known to have been misrepresented include (but are not limited to) fasteners; hoisting, rigging, and lifting equipment; crates; 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, 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.
## HEADMARK LIST

**ALL GRADE 5 AND GRADE 8 FASTENERS OF FOREIGN ORIGIN WHICH DO NOT BEAR ANY MANUFACTURERS’ HEADMARKS**

- Grade 5
- Grade 8

**GRADE 5 FASTENERS WITH THE FOLLOWING MANUFACTURERS’ HEADMARKS:**

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<th>MARK</th>
<th>MANUFACTURER</th>
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<td>J</td>
<td>Jinn Her (TW)</td>
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**GRADE 8 FASTENERS WITH THE FOLLOWING MANUFACTURERS’ HEADMARKS:**

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<tbody>
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<td>A</td>
<td>Asahi Mfg. (JP)</td>
<td>KS</td>
<td>Kosaka Kogyo (JP)</td>
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<tr>
<td>NF</td>
<td>Nippon Fasteners (JP)</td>
<td>RT</td>
<td>Takai Ltd (JP)</td>
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<td>H</td>
<td>Hinomoto Metal (JP)</td>
<td>FM</td>
<td>Fastener Co of Japan (JP)</td>
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<td>Minamida Sieybo (JP)</td>
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<td>Kyoel Mfg (JP)</td>
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- Hollow Triangle

Infasco (CA TW JP YU) (Greater than 1/2 inch dia)

**GRADE 8.2 FASTENERS WITH THE FOLLOWING HEADMARKS:**

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<tr>
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<td>Kosaka Kogyo (JP)</td>
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**GRADE A325 FASTENERS (BENNIGHT DENVER TARGET ONLY) WITH THE FOLLOWING HEADMARKS:**

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<tr>
<td>A325 KS</td>
<td>Kosaka Kogyo (JP)</td>
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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