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IC Guiding Principles for the IC Acquisition & Procurement Community on Implementation of the Coronavirus Aid, Relief, and Economic Security Act

Over the last two weeks, ODNI has been sharing with the IC the information and implementation proposals on the handling of economic impacts of the COVID-19 mitigation actions. In particular, the IC Senior Acquisition Executive and IC Senior Procurement Executive have been working with your staff to develop answers to the many unique situations, and to ensure ODNI support for the decisions Agencies are making. This memorandum provides you with documentation on the guiding principles we are using to address procurement issues during pandemic mitigation.

ODNI supports the immediate implementation of Section 3610 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Section 3610 of the CARES Act, which the president signed into law on March 27, 2020, authorizes agencies to modify contracts when contractor employees cannot access authorized work sites or work remotely because of health and safety concerns caused by COVID-19. Such modifications will help companies performing essential national security missions remain financially viable and enable the retention of skilled (and often cleared) contractor employees, thereby ensuring the long-term health of the industrial base on which the Intelligence Community, the Defense Department, and other Federal agencies depend.

ODNI strongly encourages IC Agencies to make full use of the flexibility provided by this Act and other existing contracting tools to enable the maximum number of contract personnel to convert to staying home in a “ready state” during the national effort to mitigate the spread of the COVID-19 pandemic. ODNI has reduced its acquisition and procurement staffing to manage the response to the pandemic--we encourage other Agencies and organizations to minimize staffing related to acquisition and development efforts as well. ODNI organizations will not be requesting normal activities in those areas during the crisis. ODNI will support Agency decisions, as permitted by law, to slip acquisition and development milestones, even when these are already required by approved documentation, when the rationale is that Agencies seek to limit staffing during the critical period for pandemic mitigation.

To help ensure the Intelligence Community provides clear, consistent guidance to its industry partners and until OMB issues formal guidance, agencies should, to the greatest extent possible, apply Section 3610 of the CARES Act to all contracts according to the below guiding principles:

- The effective date of this legislation is 27 March 2020 and the Act states that in no event will this authority extend beyond September 30, 2020. If a contractor has COVID-19 related costs dating back to the declaration of the national emergency on 31 January 2020, the contractor may submit a request for equitable adjustment (REA) for changes or other conditions that may entitle the contractor to an REA.
- Contractors shall be reimbursed not to exceed an average of 40 hours per week per employee. Contracting Officers should consider reimbursement for costs associated with the COVID-19 without requesting consideration.

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- Section 3610 only applies if a Contractor employee was unable to perform work because they were restricted as a result of COVID-19 pandemic from the Government site where they are contractually assigned. Such authority shall apply only to a contractor whose employees or subcontractors cannot perform work on a site that has been approved by the Government, including federally-funded or leased facility of site due to a facility closures or other restrictions and who cannot telework because their job duties cannot be performed remotely during the public health emergency declared on 31 January 2020.
- The contractor shall be reimbursed at the minimum applicable contract billing rate.
- The maximum reimbursement authorized shall be reduced by the amount of credits a contractor is allowed under the CARES Act or Public Law 116-127.
- For completion type work, maximum flexibility should be employed. However, the Government can elect to maintain the original delivery date or simply extend the due date. Any additional costs would trigger a REA. If the delay was in response to the national emergency and the employee was unable to work remotely from home or work at a Government facility, then the associated labor costs may be eligible for reimbursement under the CARES Act.
- For contractors and their invoices: Contractors shall segregate and specifically identify the time and expenditures billed under this authority to allow for future review and analysis of COVID-19 related expenses. Contractors shall also identify whether or not they are receiving benefits under Division G of Public Law 116-127 or any applicable credits a contractor is allowed under the CARES Act.
- For programs: Each agency is requested to aggregate their total expenses incurred that they attribute to the use of this authority. Further guidance will be provided by IC/CFO regarding reporting requirements.

Should you have any questions, please contact Bob Miller, IC Senior Procurement Executive at (301) 243-1264.



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Date