



April 8, 2020

The Honorable Ellen Lord
Under Secretary of Defense for Acquisition and Sustainment
3010 Defense Pentagon
Washington, DC 20301-3010

Subject: Input Regarding DOD Implementation of Section 3610 of the CARES Act

Dear Under Secretary Lord:

INSA represents more than 160 companies that support the Department of Defense (DOD) and the Intelligence Community on a wide range of complex, and often classified, challenges that are critical to national security. We welcome this opportunity to provide industry insights that can inform the Department's guidance on the implementation of Section 3610 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which the president signed into law on March 27, 2020.

Section 3610 authorizes government agencies to modify contracts when COVID-19 health and safety concerns prevent contractor employees from accessing authorized work sites or working remotely. 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 national security industrial base.

The modification of thousands of individual contracts is neither feasible nor desirable, as it could overload the Department's contracting professionals and lead to inconsistent instructions. Therefore, individual contract modifications should not be required for contractors to seek reimbursement under Section 3610. Instead, INSA encourages DOD to provide clear, uniform guidance to its industry partners by applying Section 3610 of the CARES Act to all contracts according to the below principles.

1. Work Location: Because the content and quality of contracted work matter more than the location where it is performed, DOD should permit maximum flexibility in place and performance for all contracts. DOD should direct that all contracts permit telework and work from non-government facilities – such as facilities owned, leased, or approved by contractors – as long as the contract's security requirements can be met. Any site accredited by a U.S. Government agency as suitable for classified work should be deemed to be "approved by the Federal government" under the terms of the statute.
2. Inability to Work: Contractors should be paid in full, up to an average of 40 hours per week, for time in which their employees are unable to work because they are (a) kept "in a ready state," as called for by the statute, (b) ill from COVID-19 and unable to work or report to work, (c) unable to telework due to the nature of the work required, (d) deemed non-essential, (e) unable to perform because of the unavailability of key government personnel, subcontractors, or necessary supplies, or (f) prohibited from working, as a result of actions taken by federal, state, or local government officials, for any reason necessary to promote health and safety.
3. Billing: If a contractually required deliverable cannot be completed because of COVID-19 restrictions, progress payments should continue on the contract's original schedule, and no

penalties for late delivery should be imposed. Where no minimum billing rate is specified, the statute's reference to reimbursement at "the minimum applicable contract billing rates" should be interpreted as the contractor's standard burdened rates.

4. Applicable Dates: Section 3610 should apply retroactively to January 31, 2020, the date on which the Secretary of Health and Human Services declared a public health emergency in response to COVID-19.
5. Stop Work Orders: If the Department issues a stop-work order because work is no longer feasible due to COVID-19-related restrictions, the contractor should be entitled to initiate a request for equitable adjustment for its costs.

Thank you for considering these principles as you develop DOD guidance for the implementation of section 3610 of the CARES Act.

Sincerely,

A handwritten signature in cursive script that reads "Suzanne Wilson Heckenberg".

Suzanne Wilson Heckenberg
President