

**Frequently Asked Questions (FAQ)
Regarding COVID-19 Impacts
& the Advance Agreement
for
NASA Contractors**

1. What is the Agency’s plan to communicate with NASA Contractors?

NASA has conducted ongoing communications with NASA Partners. On March 10, NASA notified the Contractor community that NASA was increasing telework opportunities and identified a temporary policy regarding individuals who have traveled to countries that the Center for Disease Control and Prevention has placed at “Level 3” concern. Recently, NASA has issued additional notifications (See the *NASA Office of Procurement White Paper on Coronavirus*) to Contractors regarding the status of NASA Centers, which also continued to encourage Contractors to identify telework opportunities for employees and identify work that cannot be performed safely.

In keeping with the evolving nature of the Nation’s response, NASA is also planning additional communication to the Contractor community, which will continue to promote telework opportunities, and leverage Procurement flexibilities per the Federal Acquisitions Regulations (FAR).

2. Does NASA support telework by its federal contractors?

Yes. See response to question 1 above.

3. What is NASA doing when Contractors are not allowed to telework?

NASA remains open and is promoting telework to the maximum extent practical. In working with Center leadership, NASA has identified a list of alternate work examples that could be performed remotely and would be considered within scope of the contract (e.g. training, document or process reviews & updates to include emergency plans, drawings, and updates to knowledge management processes). Contracting Officers will engage with Contractors to evaluate remote work opportunities.

4. Why did NASA issue the MEMORANDUM FOR NASA CONTRACTOR COMMUNITY notification on March 24, 2020?

In response to the Coronavirus (COVID-19) pandemic, the Federal Government thru the Centers for Disease Control and Prevention (CDC) has issued precautions and/or guidelines to slow the spread of the disease. State and local government directives, decisions, and recommendations also are impacting Contractors’ ability to operate. At NASA, the health and safety of our NASA Community is the top priority and critical to the success of our mission. Based on the evolving Coronavirus situation and the impact to the world, NASA wants its contractors to be aware that the Agency is working very diligently to preserve Space Industrial Base and Mission Operational Readiness.

5. What procurement authorities enable the Contractor to maintain employees in a mobile-ready state to maintain the Space Industrial Base and other skilled professionals and key personnel?

NASA's Office of Procurement and the Office of General Counsel have identified flexibilities that would enable preservation of the space industrial base and mission operations readiness. The options are:

For On-site contractors: NASA FAR Supplement clause 1852.242-72, *Denied Access to NASA Facilities* clause, when a NASA Facility is closed and there is no work that a Contractor or their employee can accomplish from a remote location.

For Off-site Contractors: FAR 52.242-15 *Stop Work Order* clause, when a contractor informs us that they cannot safely perform work at their facilities, either because of state guidelines or their own internal assessment; and/or applicable clauses such as FAR 52.212(4) T&C for Commercial Items.

In addition, the Office of Procurement has created an Advance Agreement mechanism to facilitate a standard Agency solution and to expedite the modification process to execute these flexibilities.

The passage of the CARES Act compliments other Federal Acquisition Regulations (FAR) including the NASA FAR Supplement authorities and explicitly states Contracting Officers now have the authority to reimburse contractors and their subcontractors for paid leave given:

- A. Contractor employees or subcontractors cannot perform work due to a facility closures or other restrictions;
- B. Employees cannot telework because their job duties cannot be performed remotely; and
- C. The employees are kept at a "ready state."

6. Is NASA automatically issuing a Stop Work Order? What steps should a Contractor initiate to notify NASA of COVID-19 impacts?

NASA is not automatically issuing Stop Work Order or Denied Access letters. To initiate either of these two events, ***a contractor must follow*** the steps in the MEMORANDUM FOR NASA CONTRACTOR COMMUNITY issued on March 24th.

Step 1: Notify your contracting officer (phone or email).

Step 2: Click the link within the letter which records your request and formally notifies the Agency of your need of an Advance Agreement with due to performance impacts due to COVID-19.

The Contracting Officers (CO), Contracting Officer Representatives (COR) will work with you to complete the Advance Agreement. Within the advance agreements you will identify what

work will continue, what work will not continue, and the quantity of staff that is impacted, including those that cannot telework. The Contractor shall also address NASA identified alternate work that potentially could be performed remotely, things such as training and documentation of process improvements, lessons learned, or other contract specific items (drawings, processes, etc.).

Step 3: The CO will create a Bilateral Modification to incorporate Advance Agreement into Contract.

Step 4: The contractor will either invoice in accordance with the Continuity of Work Invoicing Instructions and/or invoice in accordance Invoicing for Weather and Safety Leave Impacts. The Advance Agreement contains the invoicing instructions.

- A. **Continuity of Work Invoicing** – Applies to ongoing work to include telework and alternate work. Invoice process is normal.
- B. **Invoicing for Weather and Safety Leave (COVID-19 impact)** – NASA is Allowing for monthly provisional billing
 - i. Enables agencies to reimburse paid leave that contractors provide to keep their employees and subcontractors in a ready state when contractors cannot perform work.
 - ii. Enable NASA to track this cost separately for reporting purposes, Contractors are required to identified as weather and safety leave for charging and invoice purposes.
 - iii. Requires a separate invoice and must adhere to the instructions on the Advance Agreement for billing and labeling the invoice (COVID-19 nomenclature).
 - i. Invoice shall separate labor and non-labor expenses.
 - iv. Requires Contractor to flow down to subcontractors and payment to employees.
 - v. Requires Contractors that received loans that are forgiven thru the CARES Act Authorizations will be required to identify those amounts and per the division G of Public Law 116–127.

Step 5: Return to WORK/Operational Norms

CO and Contractor finalize and reconcile provisional billing and close out the Advance Agreement with a modification.

8. If Contractors do not currently have any impacts related to COVID-19 but Contractors status change in the future can Contractors notify NASA?

Yes, per the NASA Contractor Community Memorandum issued on March 24, Contractors can notify NASA if work is impacted in the future due to the COVID-19 situation.

9. What is the purpose of the Advance Agreement?

The advance agreement will provide a path forward for NASA COs, CORs, and NASA Contractors regarding work and cost incurrence and reporting for navigating ongoing work

and/or interruptions associated with COVID-19. The advance agreement is required if there is a work stoppage impact from the COVID-19 emergency.

10. Is an Advance Agreement required if the Contractor can continue performance of all work from a remote location?

No, if the Contractor can continue performance of all work an Advanced Agreement is not required.

11. Is a separate Advance Agreement required to be completed if the Contractor work stoppage work changes/increase (e.g. Center status increases from stage 3 to stage 4, large program work changes)?

It depends. In the event the scope of the Contractor's work stoppage increases, the CO, COR, and Contractor shall document the additional work stoppage and impact. If the timing of adding the additional work stoppage by modification is near the end of the emergency, the CO may capture the additional work stoppage information as part of the reconciliation modification, which is required after the emergency has passed and work returns to a normal status.

12. Can Contractors select more than one clause option for the authority? For example, what if they have performance at multiple centers? Also, what if they have impacts due to Denied Access and Stop Work?

Answer: Yes, multiple authorities may be used. The CARES Act only applies to labor expense of employees. Non-labor expenses will require authorization by an existing contract clause, such as Denied Access or Stop Work. The CO shall identify the applicable clause for the unique contract situation and document this information in the Advance Agreement Addendum.

13. Box 15 of the Advance Agreement requires Contractors to add the names of their employees that are unable to perform work. What if there are several hundred employees that fall under box 15?

The intent of requiring Contractors to identify names is to ensure the payments disbursed by the Government are received by the employees. Contractors should be able to print a list of employees from their HR systems. Names can be attached to the Advance Agreement in lieu of inserting names into box 15

14. What authority should the bilateral modification reference?

Modifications shall reference, Section 3610 (Federal Contractor Authority) of the "Coronavirus Aid, Relief, and Economic Security Act" (H.R. 748) ("the CARES Act"). The CARES Act is only applicable to Employee labor. The CARES Act complements the FAR 52.242-15 Stop Work Order or NFS 1852.242-72 Denied Access to NASA Facilities, or similar applicable clause unique to the specific contract such as FAR 52.212(4) T&C for Commercial Items. The reference authority shall be the CARES ACT and the applicable Contract Clause.

15. Will the Advance Agreement result in 2 modifications?

Yes, at least a minimum of 2 modifications. One (1) to incorporate the Advance Agreement into the contract and one (1) to close the Advance Agreement (e.g. reconciliation of cost and impact to service or deliverable) after a return to normal operations. An additional modification(s) may be required to capture any increase in work stoppage (depends on unique situation and magnitude).

16. What is the timeframe that a Contractor can identify a work stoppage and identify the need to place employees in the weather and safety (or similar) leave status?

Per OMB Memorandum M-20-22, reimbursement for the cost of paid leave under Section 3610 of the CARES Act is authorized for leave taken after March 27, 2020 and before September 30, 2021 (Extended by H.R. 1319). Although a public health emergency was declared on January 31, 2020, the CARES Act was enacted into law on March 27, 2020. Section 3610 is not retroactive and applies only after the CARES Act was enacted.

17. How many characters does the Advance Agreement fill-in box summary hold? Can Contractors upload an excel sheet with Contractor information instead of including in the fill-in box identified on the Advance Agreement?

The Advanced Agreement fill-in summary boxes expand for an unlimited amount of characters. If documents are attached, the Advance Agreement fill-in box summaries will require a synopsis of the attached documents. The synopsis enables automatic data collections.

18. Will an advance agreement be needed for each task order under an Indefinite Delivery Indefinite Quantity (IDIQ) contract?

No, only one Advance Agreement is required per contract to determine the path forward between NASA and the Contractor. In the event the contract has multiple task orders, the CO shall coordinate with the affected COR to ensure funding is available for provisional invoicing purposes.

19. Does the Advance Agreement apply to Subcontractors?

The agreement terms shall flow down to Subcontractors.

20. Does the Advance Agreement require signature?

No, a bilateral modification will incorporate it into the contract.

21. For 100% IDIQ Multiple Award Contracts (MACs) with firm-fixed price task orders, is an Advanced Agreement required if there is currently no work on a contract?

No.

22. Is the Contractor required to submit a separate invoice for any COVID-19 Impact?

Yes, per the Advance Agreement Contractors shall submit a separate invoice. If any of the invoicing clauses require a frequency modification to enable additional invoicing, the CO shall capture the modified language on the Advance Agreement addendum.

23. Would Contractor employees qualify for unemployment?

It depends on their situation and applicable unemployment rules.

24. If contractor employees receive unemployment benefits, may the contractor include expenses for those employees in its invoice.

No.

25. If a Firm Fixed Price (FFP) Contractor utilizes the Weather and Safety Leave, can the Contractor provisional billing include profit?

FFP Contractors can bill for profit that is part of the original contract price. Additional profit above that which is already part of the contract price is not permitted.

26. Should the Contractor submit a separate invoice to identify COVID-19 impacts in addition to a normal invoice if there is ongoing work?

Yes, per the terms of the Advance Agreement.

27. How will a Contractor demonstrate that it paid its employees?

Certified Payroll records or similar documentation.

28. For cost incurred due to alternate work performed in a remote location or cost to preserve the Contractor readiness how does the Contractor charge and who pays for this cost?

Contractors will continue to charge to their normal projects during this emergency. Refer to your Contracting Officer for additional details.

29. By maintaining a ready workforce so the Contractor can immediately resume work, should the Contractor keep equipment idle?

The CO & COR shall discuss impacts regarding equipment and determine the most effective and efficient approach for the unique situation. The Advance Agreement ground rules require the Contractor to minimize cost to the maximum extent practical and to notify the CO of any anticipated cost increase.

30. Section 3610 of the CARES Act provides authority for contractor relief. Will this be a different process than the efforts NASA is already implementing?

No, NASA current strategy was developed to preserve the Readiness of the Space Industrial Base and NASA Mission Operational Readiness due to the Coronavirus (COVID-19) Situation. A \$2T Relief Package, Keeping Workers Paid and Employed, Health Care System Enhancements, and Economic Stabilization. Within this Division is a set of Labor Provisions, including Section 3610, Federal Contractor Authority. This government-wide provision enables agencies to reimburse paid leave that contractors provide to keep their employees and subcontractors in a ready state when contractors cannot perform work during the current pandemic on a site that has been approved by the Federal government. For NASA, this legislation reinforces Agency authorities already being exercised.

31. For identified mission essential work at an offsite or onsite location will NASA provide documentation to the Contractor in case the local state or municipality initiate a shelter in-place? If so what is the process for the Contractor or its suppliers to request such a letter.

For Off-Site: NASA HQ is reviewing each request individually to decide about mission essential critical aeronautical and space activity required for the general welfare and security of the United States consistent with 51 U.S.C. 20102(b). If NASA decides a company is performing essential work, the company must provide their employees the appropriate documentation.

For On-Site: Employees who are required to travel to and from the worksite (Center or Headquarters) to perform mission essential work should show their NASA PIV card (government badge) and state they work for the federal government and are traveling to or from work, if stopped by law enforcement.

32. Will the COVID-19 emergency delay or defer anticipated contract awards or the schedules for these forthcoming programs? If so, how will these adjustments be prioritized, determined, and communicated?

The Agency is working to maintain its current contract award schedule. We have virtual sites and processes such as a virtual source selection evaluation capability and electronic proposal submittal processes in place so that we can effectively operate in a remote fashion. We will continue to monitor this situation and will adjust our approach as necessary. If the need to grant an acquisition timeline extension arises, we will communicate that to industry via an update on beta.sam.gov where our solicitations are posted for industry to view.

33. Has the CARES Act Section 3610 expired?

It expires on September 30, 2021.

34. When the CARES Act Section 3610 expires, will NASA continue with existing FAR based authorities as outlined in Memorandum for NASA Contractor Community dated 24 March 2020 to enable Contractors to maintain its readiness to assume full contractor performance immediately once it is deemed safe to do so?

FAR 52.242-15 Stop Work Order or NFS 1852.242-72 Denied Access to NASA Facilities authorizes reimbursement of certain costs for the Contractor to maintain readiness while access is restricted to the facility. Contracting Officers, CORs, and Contractors shall update any Advance Agreements and Modifications to reflect the change in authority and any revisions to the quantity of employees affected.

When the CARES Act expires, contractors shall no longer identify affected employees as “Weather and Safety leave” but should categorize employees as “Mobile Ready” due to restricted access to the facility. Provisional invoicing instructions remain intact and “Weather and Safety” Leave shall be updated to “Mobile Readiness”. Provisional cost associated with “Mobile Ready” will be finalized as part of the REA once there is no longer restricted access to the facility.

Once the Center reopens and notifies Contractors that the Restrictive Site access has been rescinded, the Government has no authority under either contract provisions or the CARES Act to reimburse Contractors for Weather and Safety or Mobile Ready leave. Contractors must take proper steps to remobilize to perform the work. If Contractor employees do not return to work, they must follow normal company leave policies.

There is the possibility that Contractors located on the same Center could be impacted differently based on the Center's reopening strategy. If the Center applies a phased reopening strategy (e.g. work-type based, or facility based), some Contractors and subsets of Contractor employees may be authorized to return to work on site sooner than others depending on the specific location of their work. Authority to reimburse contractors for Mobile Ready leave under contract provisions may continue to apply for those Contractors that remain in a status of restricted access to on-site work and cannot telework and must remain in a ready state.

35. Relative to NASA's Framework for Return to On-Site Work, what should contractors do when NASA transitions from Stage 3 to Stage 2 and Stage 2 to Stage 1?

When a NASA Center goes to Stage 2, contractors that must be on-site to perform their work shall coordinate with their project manager and, if appropriate, their Contracting Officer Representative (COR) prior to returning to the Center to accomplish contractually required work. All other contractors shall continue to work remotely. When a NASA Center goes to Stage 1, contractor employees who can accomplish their work remotely are encouraged to do so where appropriate, as determined by the COR, and approved in accordance with company policy.