



# DEFENSE PRICING AND CONTRACTING

## Implementation Guidance for Section 3610

April 14, 2020

The “**CARES Act**” (**Coronavirus Aid, Relief, and Economic Security**) was enacted on March 27, 2020, in response to the Coronavirus Disease 2019 (COVID-19) public health emergency. This act offers relief targeted to federal workers who cannot work during the COVID-19 public health emergency due to facility closures or other restrictions and cannot telework because their job duties cannot be performed remotely.

The Defense Pricing and Contracting (DPC) office has issued a class deviation to the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS) entitled, “CARES Act Section 3610 Implementation”. Deviation 2020-O0013 establishes a new cost principle that will allow recovery of such costs where appropriate. This class deviation is the 17th new COVID-19 guidance the Department of Defense's Pricing and Contracting (DPC) office has provided to help relieve COVID-19 impacts for the Contracting Community. Section 3610 of the CARES Act authorizes agencies to use any available funds to modify affected contracts – without consideration – to reimburse paid leave, including sick leave, that a contractor provides to keep its employees or subcontractors in a ready state. The authorized reimbursements may cover an average of 40 hours per week, “at the minimum applicable contract billing rates” during the public health emergency declared for COVID–19 on January 31, 2020, through September 30, 2020.

Implementation of section 3610 will vary based on contract type: **1) Under Fixed Price contracts** - the contracting officer will need to negotiate equitable adjustments to the price and delivery schedule to recognize the impact of any COVID-19 caused shutdowns. When the permissive authority under section 3610 is used, equitable adjustments should compensate only for the costs of providing paid leave as permitted by section 3610, for maintaining the workforce, and shall not increase profit. Contracting officers shall establish one or more separate contract line items for section 3610 COVID-19 payments to ensure traceability and clarify whether payments under section 3610 constitute acceptance of the supplies or services that are not being delivered or performed. A suggested approach is to create a line item or set of line items, such as “Labor Force Retention COVID-19,” at a fixed price per unit of measure, e.g. “Hours” or “Days,” exclusive of profit. Contractors should be able to distinguish all leave paid under these line items from actual hours worked, and submit a monthly invoice under these line items with the number of hours of eligible leave per labor category. The invoice should contain supporting documentation to identify and explain why claimed hours could not be worked, along with a statement that these costs are not being reimbursed under other authorities. **2) Under cost-reimbursement contracts** - the recommended approach is for costs to be charged to a separate account, such as “Other Direct Cost - COVID 19.” Contracting officers will need to work with the contractor to establish appropriate cost procedures. Additional efforts will be needed to adjust the estimated costs, again by segregating these on a separate line item. **3) Under Time and Materials or Labor Hour contracts** - creation of a separate line item for this reimbursement under section 3610 authority should enable segregation of these costs, upon receipt of a request for equitable adjustment. The information on supporting documentation would be retained for audit, while the interim voucher would be provisionally approved and paid under existing procedures. **4) Because contractors can only recover once for section 3610 covered impacts** - when a contract has a mix of fixed price and cost type line items, recovery need not be addressed separately for each contract type.

The maximum reimbursement must be reduced, however, by the amount of any credit the contractor is allowed pursuant to Division G (“Tax Credits for Paid Sick and Paid Family and Medical Leave”) of the recently enacted Families First Coronavirus Response Act, and by any other applicable credits that the

contractor is allowed under the CARES Act. It should also be made clear that any company requesting reimbursement under Section 3610 should maintain adequate documentation; evidence that reimbursement requests meet statutory requirements; and ensure ongoing vigilance to remain in compliance.

Currently, many Department of Defense (DoD) contractors are struggling to maintain a mission-ready workforce due to work site closures, personnel quarantines, and state and local restrictions on movement related to the COVID-19 pandemic that cannot be resolved through remote work. It is imperative that we support affected contractors, using the acquisition tools available, to ensure a responsive total force in response to COVID-19.

The CARES Act Section 3610 Implementation, would not be appropriate for consideration in the following circumstances: when employees or subcontractor employees were able to work, including remote or telework; when costs were not associated with keeping employees in a ready state; for costs incurred prior to January 31, 2020, or after September 30, 2020; or when the contractor has been or can be reimbursed for employee leave costs by other means. Additionally, it is inapplicable for costs not related to COVID-19 and is subject to the availability of funds.

Some contractors may receive compensation from other provisions of the CARES Act which contracting officers must avoid duplication of payments. An example of another provision of the CARES Act, the Paycheck Protection Program (PPP), was established to provide a direct means to business contractors that are sheltering-in-place and unable to telework. The PPP could be used to pay its employees and then have the PPP loan forgiven, pursuant to the criteria published by the Small Business Administration. In such a case, the small business should not seek reimbursement for the payment from DoD using the provisions of section 3610.

Contracting officers shall consider the immediacy of the specific circumstances of the contractor involved and respond accordingly. The impact of COVID-19 on a contractor providing labor services will differ from the impact on a contractor that develops information systems. Some contractors may be unable to conduct any business during the COVID-19 pandemic and as a result, such contractors would generate no new revenue, have difficulties making payroll and meeting other financial obligations. In contrast, other contractors may still have incoming revenue, and be able to conduct work remotely. Some contractors will have a more immediate need for relief than others depending on the Impacts experienced.

The DPC anticipates the need for additional guidance and will continue to provide answers to frequently asked questions and provide additional implementation information and guidance as appropriate.

[Review responses to the most frequently asked questions.](#)