

Section 3610 CARES Act Implementation Guidance

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 17, 2020

M-20-22

MEMORANDUM TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Michael J. Rigas
Acting Deputy Director for Management

SUBJECT: Preserving the Resilience of the Federal Contracting Base in the Fight Against the Coronavirus Disease 2019 (COVID-19)

Office of Management and Budget (OMB) Memorandum M-20-21 outlines the Administration's commitment to both rapid delivery of COVID-19 relief legislation funding and accountability mechanisms to help safeguard taxpayer dollars. The guidance references OMB Memorandum M-20-18¹ which is intended to help the acquisition workforce ensure the health and safety of federal contractors in light of COVID-19, while maintaining continued contract performance in support of agency missions. This memorandum supplements Memorandum M-20-18 with guidance for the implementation of section 3610 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. No. 116-136). Section 3610 provides agencies an additional discretionary authority to reimburse costs of paid leave to federal contractors and subcontractors, subject to conditions described below. (See attachment for text of section 3610.)

Background

OMB Memorandum M-20-18 states that maintaining the resilience of the federal contracting base requires a multi-faceted strategy to combat the significant disruptions, both to health and economic well-being, caused by COVID-19. Such strategy includes maximizing use of telework, extending performance dates if telework or other flexible work solutions are not possible, and, where appropriate, reimbursing contractors for paid leave or negotiating other forms of equitable adjustment necessary as a direct result of COVID-19. For example, the memorandum explains that it may be beneficial to reimburse contractors for paid leave to keep personnel in a mobile ready state for activities so the contractor can resume supporting the agency's mission as soon as possible when circumstances permit.²

¹ M-20-18 *Managing Federal Contract Performance Issues Associated with the Novel Coronavirus (COVID-19)* (March 20, 2020), available at <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-18.pdf>.

² For example, OMB M-20-18 states that it may be beneficial to keep personnel, such as national security professionals or skilled scientists, in a mobile ready state for activities the agency deems critical to national security or other high priorities or to pay leave as a bridge to hold over employees where a contract may be retooled for pandemic response.

Section 3610 of the CARES Act reinforces the legitimate role paid leave may play in maintaining the contractor in a ready state (*i.e.*, the ability to mobilize in a timely manner) by making clear that such costs may be reimbursed. At the same time, section 3610, like OMB's guidance, recognizes that an effective resiliency strategy is multi-faceted and places certain offsets on the reimbursement of paid leave, such as where certain other forms of relief are available, as well as prohibitions on the availability of paid leave, including where telework is possible.

This memorandum provides guiding principles to help agencies determine the appropriate role of section 3610 in supporting the needs of their contractors and subcontractors, both small and large.

Guiding principles

The following guiding principles are designed to support continued exercise of sound business judgment by agencies and the acquisition workforce in the use of section 3610.

Using these principles is expected to result in different applications of this authority across buying offices within agencies and across the Federal Government. This variance is no different than would typically be expected in the application of any equitable remedy to different mission requirements, contractual arrangements, and funding situations, especially in exigent circumstances. Application of these guidelines will support rationally based decisions that reflect the best interest of the Government in any given situation, fully supported by contractor records that are subject to oversight, and that safeguard the taxpayers funding these efforts.

1. Support contractor resiliency

- a. *Carefully consider if reimbursing paid leave to keep the contractor in a ready state is in the best interest of the Government for meeting current and future needs*

Contractors that are unable to perform on their contracts because telework is not suitable and the work has not been deemed essential and exempt from shelter-in-place and stay at home orders may face unprecedented hardships as a result of COVID-19. Agencies should carefully consider if reimbursement for paid leave to keep the contractor in a ready state is in the best interest of the Government for meeting current and future needs. In considering paid leave, agencies should keep in mind that section 3610 provides agencies with considerable discretion to treat paid leave as a reimbursable cost. Agencies are permitted to:

- use any “funds made available to the agency” by Congress to reimburse contractors for workers’ lost time from March 27 to September 30, if the contractor provides leave to its employees or subcontractors “to maintain a ready state, including to protect the life and safety of Government and contractor personnel,” which would include, but not be limited to, the circumstances addressed in M-20-18;

- modify contracts unilaterally or bilaterally to reimburse allowable paid leave costs, without securing additional consideration;
- provide reimbursement on any commercial or non-commercial contract with any contract type without invoking the need for terms and conditions associated with a reimbursable item; and
- reimburse at contractor billing rates, which might include certain overhead costs in addition to labor, but shall not include profit or fees.

b. *Be mindful of the challenges faced by small businesses*

Small businesses whose work must be stopped because of COVID-19 may face the most difficult economic hardships. Navigating the various relief provisions in the CARES Act and other recent relief legislation to determine the best approach for maintaining readiness may be complicated for small businesses. Agency contracting offices are strongly encouraged to work closely with their Offices of Small and Disadvantaged Business Utilization to ensure their small business contractors are aware of the available support resources to help them in understanding the various relief provisions. For a list of resources that can support COVID-related challenges, see the Small Business Administration (SBA) local assistance finder³ and SBA's COVID-19 relief options and resources site.⁴ Contracting officers should also work with small businesses to help them understand what documentation may be required beyond that normally submitted to support costs claimed for reimbursement under section 3610.

Agencies are reminded additional mechanisms, beyond those recently provided in the CARES Act, might assist with cash flow for small businesses. For example, section 873 of the National Defense Authorization Act for FY 2020 (Pub. L. No. 116-92) provides for accelerated payments to contractors that are small businesses, and to small business subcontractors where the government has accelerated its payment to the prime contractor. Agencies should consider issuing class deviations to exercise this authority now while the Federal Acquisition Regulatory Council completes the rulemaking process for implementing this provision in the Federal Acquisition Regulation.⁵

2. Exercise good stewardship

The Federal Government's aggressive response to COVID-19 includes an unprecedented economic relief package, including multiple mechanisms to support federal contractors and their employees. To ensure this relief achieves its desired impact and federal funds are not being used to make multiple payments for the same purpose, agencies should take the following steps.

³ <https://www.sba.gov/local-assistance/find/>.

⁴ <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options>.

⁵ On April 6, 2020, the Civilian Agency Acquisition Council (CAAC) issued CAAC Letter 2020-02 to facilitate agency issuance of class deviations for the immediate implementation of accelerated payment in accordance with section 873. See https://www.acquisition.gov/sites/default/files/page_file_uploads/CAAC-Letter-2020-02-Accelerated-payments-to-SB-contractors-and-subcontractors040620.pdf.

a. *Maintain mission focus and evaluate use of section 3610 in the broader context of all strategies to promote contractor resiliency*

Congress made clear that reimbursements made pursuant to section 3610 are subject to the availability of funds. In addition, section 3610 does not compel reimbursement of paid costs.⁶ Instead, it simply authorizes payment of these costs such that agencies may use their discretion to make reimbursements only when they find that making such payments are in the best interest of the government. Accordingly, in determining where and how to implement additional paid leave, agencies should:

- first look at the funding they have available, the impact of funding or of not funding additional paid leave and the mission impact of each alternative; and
- evaluate the benefits of paid leave under section 3610 in the context of the broader universe of available options to determine where it is best applied in light of potential budget constraints. The CARES Act contains a wide-range of relief for federal contractors, including loan relief, loans, favorable tax-changes, and other assistance. Also, continued efforts to help contractors address the disruptions of COVID-19 using a multi-faceted approach, as called for by M-20-18, could help uncover untapped opportunities for telework or other virtual workplace strategies, schedule extensions, option exercises and contract extensions that may alleviate the need for paid leave.

b. *Follow restrictions in section 3610*

Section 3610 restricts the circumstances under which reimbursement may be made, and the amount of reimbursement allowed. Specifically, section 3610:

- applies only to a contractor whose employees or subcontractors:
 - cannot perform work on a government-owned, government-leased, contractor-owned, or contractor-leased facility or site approved by the federal government for contract performance due to closures or other restrictions, and are unable to telework because their job duties cannot be performed remotely during the public health emergency declared on January 31, 2020 for Coronavirus (COVID-19).⁷
- authorizes reimbursement only:
 - at the actual amount paid but not more than the minimum applicable contract billing rates for up to an average of 40 hours per week, and

⁶ By contrast, section 18006 states that educational institutions that receive funding “shall, to the greatest extent practicable” continue to pay their contractors during the period of any disruptions or closures related to the coronavirus. Section 19005 states that the Architect of the Capitol is to “continue to make payments provided for under . . . contract for the weekly salaries and benefits of . . . [contractor] employees” who are “furloughed or otherwise unable to work” during closures.

⁷ For example, a contractor could not claim paid time off for childcare under section 3610, as that would presume that the contractor’s employees are able to work but must take leave for these purposes.

for contractor or subcontractor payments made no earlier than March 27, 2020 and no later than September 30, 2020.

In addition, the Government is required to reduce the maximum reimbursement authorized by this section by the amount of credit a contractor is allowed pursuant to division G of Public Law 116–127 (Families First Coronavirus Response Act) and any applicable credits a contractor is allowed under this Act. See paragraph c for additional discussion regarding this reduction.

c. Work with the contractor to secure necessary documentation to support reimbursement and prevent duplication of payment

Contractors are responsible for the well-being of their workforce. They also bear the burden of supporting any claimed allowable costs, including claimed leave costs for their employees, with appropriate documentation and identifying credits that may reduce reimbursement. Contractors must fully support and maintain documentation for claims made under section 3610. Agencies are encouraged to work with their contractors to understand how they are using or plan to use the relief provisions available to them under the CARES Act and the Families First Act to address the health and economic hardships created by COVID-19.

In some cases, provisions other than section 3610 may provide a more efficient means of getting payment into the hands of contract employees. In other cases, a contractor may find it beneficial to take advantage of a combination of resources. For example, a business may wish to use the Paycheck Protection Program (PPP) established pursuant to sections 1102 and 1106 of the CARES Act for certain relief and request agency support under section 3610 for other relief. For this reason, it is important to secure fully supported documentation from contractors regarding other relief claimed or received, including credits allowed, along with the financial and other documentation necessary to support their requests for reimbursement under section 3610.

Fully supported documentation, which may involve representations, will help to prevent incidence of double-dipping, as would be the case, for example, if a federal contractor that was sheltering-in-place and could not telework were to use the PPP to pay its employees, have the loan forgiven pursuant to the criteria established in the interim rule published by SBA⁸ and then seek reimbursement for such payment from a federal contracting agency under section 3610. Fully supported documentation also will be necessary to offset credits in accordance with the requirements of section 3610. If the amount of a credit cannot be determined at the time reimbursement is claimed by the contractor, the contractor will be responsible for reporting to the contracting officer to ensure the government is able to recover any improper payments.

d. Track use of section 3610

OMB Memorandum M-20-21 sets forth principles and guidance on spending transparency and regular reporting to provide accountability mechanisms that help safeguard taxpayer dollars. As an initial step to support accountability and transparency in connection with section 3610, agencies should process modifications allowing payments authorized by this statute and report them to the Federal Procurement Data System (FPDS); entering “COVID-19

⁸ <https://content.sba.gov/sites/default/files/2020-04/PPP--IFRN%20FINAL.pdf>

3610” at the beginning of the Description of Requirements data field on the contract action report (CAR) for the modification. Such CARs must also include the National Interest Action Code established for identifying all COVID related procurement actions (COVID-19 2020). Central collection of these data will support federal-wide analysis of contractor payments, both pre and post award, to support oversight in the implementation of section 3610 and help safeguard taxpayer dollars against duplicative and wasteful spending.

Additional Information

Acquisition policy questions regarding this guidance may be directed to the Office of Federal Procurement Policy at MBX.OMB.OFPPv2@OMB.eop.gov. OMB will continue to provide updates and additional information, including additional “frequently asked questions” as needed, to support the implementation of section 3610 and other COVID-related procurement policy issues and the resiliency of the federal acquisition community generally.

Attachment

Section 3610 of the CARES Act, Pub. L. No. 116-136

FEDERAL CONTRACTOR AUTHORITY

Notwithstanding any other provision of law, and subject to the availability of appropriations, funds made available to an agency by this Act or any other Act may be used by such agency to modify the terms and conditions of a contract, or other agreement, without consideration, to reimburse at the minimum applicable contract billing rates not to exceed an average of 40 hours per week any paid leave, including sick leave, a contractor provides to keep its employees or subcontractors in a ready state, including to protect the life and safety of Government and contractor personnel, but in no event beyond September 30, 2020. Such authority shall apply only to a contractor whose employees or subcontractors cannot perform work on a site that has been approved by the Federal Government, including a federally-owned or leased facility or site, due to facility closures or other restrictions, and who cannot telework because their job duties cannot be performed remotely during the public health emergency declared on January 31, 2020 for COVID-19: *Provided*, That the maximum reimbursement authorized by this section shall be reduced by the amount of credit a contractor is allowed pursuant to division G of Public Law 116-127 and any applicable credits a contractor is allowed under this Act.



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

In reply refer to
DARS Tracking Number: 2020-O0013

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DEFENSE FIELD ACTIVITIES

SUBJECT: Class Deviation - CARES Act Section 3610 Implementation

Pursuant to FAR 31.101, Objectives, this class deviation to FAR 31 and DFARS 231 is effective immediately and authorizes contracting officers to use the attached DFARS 231.205-79, CARES Act Section 3610 Implementation, as a framework for implementation of section 3610, Federal Contractor Authority, of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136).

The CARES Act was enacted on March 27, 2020, in response to the Coronavirus Disease 2019 (COVID-19) national emergency. Section 3610 of the CARES Act allows agencies to reimburse, at the minimum applicable contract billing rates (not to exceed an average of 40 hours per week), any paid leave, including sick leave, a contractor provides to keep its employees or subcontractors in a ready state, including to protect the life and safety of Government and contractor personnel, during the public health emergency declared for COVID-19 on January 31, 2020, through September 30, 2020.

As expressed in the OUSD(A&S) Defense Pricing and Contracting Memorandum, Managing Defense Contracts Impacts of the Novel Coronavirus, dated March 30, 2020, it is important that our military, civilian, and contractor communities work together to withstand the effects of COVID-19 and maintain mission readiness. 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 us, to ensure that, together, we remain a healthy, resilient, and responsive total force.

It is also important that our contracting officers are good stewards of taxpayer funds while supporting contractor resiliency. Therefore, contracting officers shall use the attached DFARS 231.205-79, CARES Act Section 3610 Implementation, when implementing section 3610, to appropriately balance flexibilities and limitations.

Some contractors may receive compensation from other provisions of the CARES Act, or other COVID-19 relief scenarios, including tax credits, and contracting officers must avoid duplication of payments. For example, the Paycheck Protection Program (PPP) established pursuant to sections 1102 and 1106 of the CARES Act may provide, in some cases, a direct means for a small business to obtain relief. A small business contractor that is sheltering-in-place and unable to telework could use the PPP to pay its employees and then have the PPP loan forgiven, pursuant to the criteria established in the interim rule 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.

Contractors are responsible for supporting any claimed costs, including claimed leave costs for their employees, with appropriate documentation and for identifying credits that may reduce reimbursement under section 3610. Contracting officers are encouraged to work with contractors to understand how they are using or plan to use the COVID-19 relief provisions and encourage contractors to use existing contract terms or the relief provisions available to them in response to COVID-19. In addition, it is important that contracting officers secure representations from contractors regarding any other relief claimed or received stemming from COVID-19, including an affirmation that the contractor has not or will not pursue reimbursement for the same costs accounted for under their request, to support their requests for reimbursement under section 3610.

When implementing section 3610, contracting officers shall consider the immediacy of the specific circumstances of the contractor involved and respond accordingly. The survival of many of the businesses the CARES Act is designed to assist may depend on this efficiency. For example, 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. As a result, such contractors would generate no new revenue, and may have difficulties making payroll, retaining employees, and meeting other financial obligations. In contrast, other contractors may still have incoming revenue, and be able to conduct work remotely. While impacts will certainly be experienced by many contractors, some will have a more immediate need for relief than others.

Section 3610 seeks to provide many flexibilities for contracting officers, including the authority to:

- Enable the contractor to stay in a ready state (*i.e.*, able to mobilize in a timely manner) by treating as allowable paid leave costs a contractor incurs to keep its employees and subcontractor employees in such a state.
- Use any “funds made available to the agency” by Congress to reimburse contractors for workers’ lost time, not otherwise reimbursable, between January 31, 2020, and September 30, 2020, if the contractor provides leave to its employees or subcontractor employees “to maintain a ready state, including to protect the life and safety of Government and contractor personnel,” which include, but are not limited to, quarantining, social distancing, or other COVID-19 related interruptions, as discussed in Office of Management and Budget Memorandum M-20-18, *Managing Federal Contract Performance Issues Associated with the Novel Coronavirus*, dated March 20, 2020;
- Modify contracts to provide for reimbursement of allowable paid leave costs, not otherwise reimbursable, without securing additional consideration; and
- Provide such reimbursement on any contract type.

Section 3610 also provides limitations on reimbursements:

- A contractor may only receive reimbursement if its employees or subcontractor employees:
 - Cannot perform work on a government-owned, government-leased, contractor-owned, or contractor-leased facility or site approved by the Federal Government for contract performance due to closures or other restrictions; and
 - Are unable to telework because their job duties cannot be performed remotely during the public health emergency declared on January 31, 2020, for COVID–19.
- Reimbursement is authorized only:
 - At the appropriate rates under the contract for up to an average of 40 hours per week; and
 - For contractor or subcontractor payments made for costs incurred, not otherwise reimbursable, not earlier than January 31, 2020, and not later than September 30, 2020;
- The Government must reduce the maximum reimbursement authorized by the amount of credit the contractor is allowed pursuant to division G of the Families First Coronavirus Response Act (Pub. L. 116–127) and any applicable credits the contractor is allowed

under the CARES Act or other credit allowed by law that is specifically identifiable with the public health emergency declared on January 31, 2020 for COVID-19; and

- Reimbursement is contingent upon the availability of funds.

We anticipate the need for additional guidance and will continue to provide answers to frequently asked questions and provide additional implementation information and guidance as appropriate.

This class deviation remains in effect until rescinded. My point of contact is Mr. Greg Snyder, who is available by telephone at 571-217-4920 or by email at gregory.d.snyder.civ@mail.mil.

Kim Herrington
Acting Principal Director,
Defense Pricing and Contracting

Attachment
As stated

DFARS 231.205-79 CARES Act Section 3610 - Implementation

(a) *Applicability.*

(1) This cost principle applies only to a contractor:

- (i) that the cognizant contracting officer has established in writing to be an affected contractor;
- (ii) whose employees or subcontractor employees:
 - (A) Cannot perform work on a government-owned, government-leased, contractor-owned, or contractor-leased facility or site approved by the federal government for contract performance due to closures or other restrictions, and
 - (B) Are unable to telework because their job duties cannot be performed remotely during the public health emergency declared on January 31, 2020, for Coronavirus (COVID-19).

(2) The maximum reimbursement authorized by section 3610 shall be reduced by the amount of credit a contractor is allowed pursuant to division G of the Families First Coronavirus Response Act (Pub. L. 116- 127) and any applicable credits a contractor is allowed under the CARES Act (Pub. L. 116-136) or other credit allowed by law that is specifically identifiable with the public health emergency declared on January 31, 2020 for COVID-19.

(b) *Allowability.*

(1) Notwithstanding any contrary provisions of FAR subparts 31.2, 31.3, 31.6, 31.7 and DFARS 231.2, 231.3, 231.6, and 231.7, costs of paid leave (including sick leave), are allowable at the appropriate rates under the contract for up to an average of 40 hours per week, and may be charged as direct charges, if appropriate, if incurred for the purpose of:

- (i) Keeping contractor employees and subcontractor employees in a ready state, including to protect the life and safety of Government and contractor personnel, notwithstanding the risks of the public health emergency declared on January 31, 2020, for COVID-19, or
- (ii) Protecting the life and safety of Government and contractor personnel against risks arising from the COVID-19 public health emergency.

(2) Costs covered by this section are limited to those that are incurred as a consequence of granting paid leave as a result of the COVID-19 national emergency and that would not be incurred in the normal course of the contractor's business. Costs of paid leave that would be incurred without regard to the existence of the COVID-19 national emergency

remain subject to all other applicable provisions of FAR subparts 31.2, 31.3, 31.6, 31.7 and DFARS 231.2, 231.3, 231.6, and 231.7. In order to be allowable under this section, costs must be segregated and identifiable in the contractor's records so that compliance with all terms of this section can be reasonably ascertained. Segregation and identification of costs can be performed by any reasonable method as long as the results provide a sufficient audit trail.

- (3) Covered paid leave is limited to leave taken by employees who otherwise would be performing work on a site that has been approved for work by the Federal Government, including on a government-owned, government-leased, contractor-owned, or contractor-leased facility approved by the federal government for contract performance; but
 - (i) The work cannot be performed because such facilities have been closed or made practically inaccessible or inoperable, or other restrictions prevent performance of work at the facility or site as a result of the COVID-19 national emergency; and
 - (ii) Paid leave is granted because the employee is unable to telework because their job duties cannot be performed remotely during public health emergency declared on January 31, 2020, for COVID-19.
- (4) The facility at which work would otherwise be performed is deemed inaccessible for purposes of paragraph (b)(3) of this subpart to the extent that travel to the facility is prohibited or made impracticable by applicable Federal, State, or local law, including temporary orders having the effect of law.
- (5) The paid leave made allowable by this section must be taken during the period of the public health emergency declared on January 31, 2020, for COVID-19, up to and including September 30, 2020.
- (6) Costs made allowable by this section are reduced by the amount the contractor is eligible to receive under any other Federal payment, allowance, or tax or other credit allowed by law that is specifically identifiable with the public health emergency declared on January 31, 2020, for COVID-19, such as the tax credit allowed by division G of Public Law 116-127.



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DEFENSE FIELD ACTIVITIES

SUBJECT: Implementation Guidance for Section 3610 of the Coronavirus Aid, Relief,
and Economic Security Act

The Coronavirus Aid, Relief, and Economic Security (CARES) Act was enacted on March 27, 2020, in response to the Coronavirus Disease 2019 (COVID-19) national emergency. Section 3610 of the CARES Act allows agencies to reimburse, at the minimum applicable contract billing rates (not to exceed an average of 40 hours per week), any paid leave, including sick leave, a contractor provides to keep its employees or subcontractors in a ready state, including to protect the life and safety of Government and contractor personnel, during the public health emergency declared for COVID-19 on January 31, 2020, through September 30, 2020. Contractors usually include employee leave in calculating their indirect rates. Therefore, leave is included in any fixed price, or labor hour rate (under Time and Materials or Labor Hour contracts), or as an element of cost on cost-reimbursement contracts. Deviation 2020-O0013 establishes a new cost principle that will allow recovery of such costs where appropriate.

To ensure traceability, it is critical that the contract and supporting documentation clearly identify these costs for reimbursement paid to contractors under section 3610 authority, as well as how such costs are identified, segregated, recorded, invoiced, and reimbursed.

Implementation of section 3610 will vary based on contract type:

1. Under Fixed Price contracts (including those with incentive provisions), upon receipt of a request for equitable adjustment, 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. In the case of incentive contracts, this should be a separate fixed price line and not subject to the incentive structure. 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. To the extent that the contractor workforce is shared across multiple contracts, contracting officers will need to coordinate on a reasonable allocation of costs, ideally through the administrative contracting officer. Contracting officers shall establish one or more separate contract line items for section 3610 COVID-19 payments to ensure traceability of expenditures 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 appropriate 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. The acceptor (i.e. contracting officer or designee) would then verify that the conditions exist and accept the effort under that line item. The "Invoice 2in1" fixed price service only, combined invoice and acceptance document in Wide Area WorkFlow, should be used to submit the request for payment.

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. The information on supporting documentation would be retained for audit, while the interim voucher would be provisionally approved and paid under existing procedures.
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. In most cases the cost reimbursement approach is preferable.

Proper administration and traceability of actions under section 3610 will require special attention to contracting procedures and contract administration by contracting officers, the Defense Contract Audit Agency (DCAA), and contracting officer's representatives (CORs). Specifically, contracting officers are reminded to ensure that they document the dates when the applicable conditions begin and end; the extent of the conditions; specific reasons why the CARES Act applies; impact on cost and pricing; and the effect on contract performance. Furthermore, CORs must use the Surveillance and Performance Monitoring Module of the Procurement Integrated Enterprise Environment to document actions impacting contract performance due to the COVID-19 pandemic. Contracting officers should work with the CORs to ensure, when accepting services under fixed price contracts, CORs only accept completed services, as section 3610 does not allow acceptance of services that have not been delivered.

DCAA has oversight of billings under cost-reimbursement, time and materials, and labor hour line items. Contracting officers must include instructions on the proper type of payment request to be used as set forth in Defense Federal Acquisition Regulation Supplement (DFARS) 252.232-7006 Wide Area WorkFlow Payment Instructions (December 2018). Note that this version of DFARS 252.232-7006 eliminates the possibility of confusion about which type of payment request to use for cost-reimbursement line items. This policy change was designed to ensure that the contract auditor has visibility of the contract billings and is able to address the impact of the contractor's controls in ensuring that these costs are properly billed. CORs should continue to monitor the billings and notify the contract auditor of any concerns.

Remember, section 3610 is contingent upon the availability of funds and no adjustment to the contract or approval of a request for equitable adjustment should be made without sufficient funds. Contractors bear the burden of supporting any claimed costs, including claimed leave costs for their employees, allocated appropriately against individual contracts, with appropriate documentation and identifying credits that may reduce reimbursement.

To identify actions against contracts and other transactions, allowing payments authorized by section 3610, report them to the Federal Procurement Data System and enter "COVID-19 3610" at the beginning of the Description of Requirements data field on the contract action report (CAR). These CARs must also include the National Interest Action designation for identifying all COVID related actions (COVID-19 2020).

As additional information is available, updates will be provided to the Frequently Asked Questions document for Section 3610 of the CARES Act at <https://www.acq.osd.mil/dpap/pacc/cc/COVID-19.html>.

My point of contact for policy is Mr. Greg Snyder,
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Kim Herrington,
Acting Principal Director,
Defense Pricing and Contracting

Implementation Guidance for Section 3610 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act

Frequently Asked Questions:

Listed below are responses to the most frequently asked questions. In addition, please refer to the following DPC issuances related to Section 3610 of the CARES Act:

- Class Deviation - CARES Act Section 3610 Implementation Deviation, 8 April 2020
- Implementation Guidance for Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act Memorandum, 9 April 2020

Due to the complexity of implementing Section 3610, these FAQs will expand as new issues are asked and answered. A current version of the FAQs will be available at

<https://www.acq.osd.mil/dpap/pacc/cc/COVID-19.html>.

FAQ Q27 through Q20 (Issued 4/17/2020)

Q27: DoD uses the term appropriate documentation to be submitted by contractors in the FAQs, what would be considered appropriate documentation to allow reimbursement under section 3610?

A27: The documentation contracting officers require contractors to provide in the course of negotiations should include identifying the employees that were provided paid leave for which the contractor is seeking reimbursement, the contract(s) the employees are performing under, and the amount and dates of the paid leave provided to the employees for which the contractor is seeking reimbursement. The contractor should also be required to explain, with respect to the employees for whose paid leave the contractor is seeking reimbursement, that the employees: (1) but for the COVID-19 pandemic, work on a site approved by the Federal Government pursuant to the contract(s) under which the claimed costs are sought; (2) could not perform work on such Federal Government approved site due to closures or other restrictions resulting from the COVID-19 pandemic; (3) were unable to telework or otherwise work remotely under the applicable contract(s) during the COVID-19 pandemic; (4) received paid leave for a period beginning no earlier than January 31, 2020, and ending no later than September 30, 2020; and (5) were provided paid leave at rates calculated based on the rates the contractor would have paid the employees it is providing paid leave to but for the COVID-19 pandemic. The contractor should also state that: (a) the costs it is claiming are only for paid leave meeting all of the previous numbered conditions; and (b) that its claimed costs constitute the only reimbursement or payment it is receiving for this purpose, and that it is not being paid or reimbursed for the same costs via any other source or funding. Additionally, contractors must provide appropriate documentation to support any claimed costs, including claimed costs for their employees' paid leave and documentation

supporting all of the above information and explanations. Contractors must also identify any credits that may reduce entitlement to reimbursement under section 3610.

Q26: Does a contractor or subcontractor employee have to be unable to perform 100% of his or her normal schedule for leave paid to them to be eligible for reimbursement under section 3610?

A26: No, there is no “100% inability to perform rule” in section 3610. Any paid leave provided to contractor or subcontractor personnel, for the purpose described in section 3610, is potentially reimbursable if the necessary conditions for reimbursement have been met.

Q25: I have a firm fixed price services contract for \$2 million with a \$10,000 cost no fee line item for travel. Should the line item for reimbursement under COVID-19 3610 be cost type or fixed price?

A25: We generally recommend against mixing contract types in a situation like this, as the administrative costs of the cost type line generally exceed the amount at risk. Therefore, in this situation, we recommend approaching this as a fixed price contract. **However, contracting officers should determine how to handle it based on their particular situation.**

Q24: Would a failure of the contractor and the contracting officer to agree on the contractors reimbursement request be settled under the disputes clause of the contract?

A24: No, the disputes clause does not apply to requests for equitable adjustment.

Q23: Please confirm that neither the FAR Credits provision, FAR 31.201-5, the credit provision in the Allowable Cost and Payment Clause, FAR 52.216- 7(h)(2), nor any other FAR or DFARS provision imposes an obligation on a contractor to credit any amount of a Payroll Protection Program (PPP) loan that is forgiven to any flexibly priced government contract or subcontract. We consider a contractor that has received a PPP loan will use the loan proceeds as it would any other funds in its corporate treasury to pay costs of doing business.

A23: We disagree that any PPP loan that has been forgiven can be treated as though it belongs to the company to use as it pleases. FAR 31.201-1, Composition of Total Cost, states that total cost is the sum of the direct and indirect costs allocable to the contract less any allocable credits. Accordingly, to the extent that PPP credits are allocable to costs allowed under a contract, the Government should receive a credit or a reduction in billing for any PPP loans or loan payments, regardless of whether the PPP loan is forgiven.

Q22: When can the contractor start billing against any section 3610 costs?

A22: The starting point for a contractor to bill for section 3610 costs is dependent on a number of things. In all cases, the contracting officer has to determine that the requisite conditions for section 3610 recovery are met and confirm the contractor's status as an "affected contractor." In a cost-plus context the latter step will take place when the contracting officer transmits his or her written determination required pursuant to DFARS 231.205-79(a)(1)(i), as outlined in the class deviation. In the context of a fixed-price contract or where recovery will take place under a fixed-price line item, a formal contract modification will be required and the execution of such a modification will necessarily entail the "affected contractor" determination. A contractor's ability to bill will depend upon the terms of that necessary modification, but certainly no billings can be made before such a modification is executed.

Q21: Does this deviation apply to contracts performed outside of the United States (e.g., overseas contracts)?

A21: Section 3610 does not prohibit reimbursement of COVID-19 paid leave costs for contracts performed outside of the United States, nor does it prohibit such reimbursement to foreign contractors.

Q20: Are contractors required to certify that they have met all of the necessary conditions when requesting reimbursement under section 3610?

A20: No. While contractors will not be required to certify their request, all contractor invoices will require applicable certification(s) under existing regulations and statutes.

**FAQ Q19 through Q1
(Issued 4/09/2020)**

4/17/20: Q14 UPDATED

Q19: FAR 4.1005-1(a)(3) and DFARS PGI 204.7103(a) both require that line items include the Product Service Code (PSC). As there is no product or service being delivered under line items used to compensate contractors under section 3610, what code should be used?

A19: The predominant PSC for the contract efforts should be used. This is also the PSC that should be used on the contract action report in FPDS.

Q18: What is meant by maintaining the contractor in a "ready state?"

A18: Ready state refers to a contractor's ability to mobilize and resume performance in a timely manner.

Q17: Section 3610 requires reimbursement to be reduced by the amount of credit a contractor is allowed within division G of Public Law 116-127 and any applicable

credits a contractor is allowed under the CARES Act. What about any State or local benefits that a contractor is offered and accepts?

A17: There may be available State and local programs to mitigate impacts to industry from COVID-19. Contractors should disclose any State and local reimbursement received for employee leave and should not request duplicate reimbursements from the Federal Government where other bases for relief have been accepted.

Q16: Will profit or fee be reimbursed under this deviation?

A16: No.

Q15: May contracting officers add CLINs to existing fixed-price contracts to reimburse contractors for this cost?

A15: Yes, contracting officers can implement an equitable adjustment of fixed price type contracts by the addition of a unique CLIN.

Q14: What about commercial item contracts?

A14: Section 3610 does not prohibit reimbursement of COVID-19 paid leave costs under contracts for commercial items. **Commercial contractors would be expected to provide appropriate documentation and justification to support any claimed costs, including claimed costs for their employees' paid leave and supporting documentation. These costs should be recognized separately as a fixed price CLIN. (Updated: April 17, 2020)**

Q13: How does this cost principle provide relief for contracts and CLINs that are other than cost-reimbursement type?

A13: The deviation does not provide specific relief to any contract; instead it authorizes reimbursement for certain costs, under certain conditions, that are related to COVID-19. Fixed-price contracts and CLINS remain fixed-price. Section 3610 provides authority for agencies to “modify the terms of a contract” to reimburse the described costs. The Defense Pricing and Contracting (DPC) implementation memo, “Implementation Guidance for Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act,” provides guidance on how to treat these costs under different contract payment paradigms.

Q12: Isn't the agency required to reimburse these costs?

A12: No, section 3610 is permissive, not mandatory. Agency decisions to reimburse these costs should take into account the Congressional intent to reduce the impacts of the COVID-19 pandemic on the Defense Industrial Base and small business entities supporting the DoD, but also fiscal constraints on the ability to fill Defense needs through contracts.

Q11: How will charging this cost affect the contractor’s responsibilities under the Limitations of Cost and Limitations of Funds clauses?

A11: Nothing in this deviation alters the terms of any FAR, Defense Federal Acquisition Regulation Supplement (DFARS), or agency supplement clause nor any other preexisting contract unique terms that might exist, including those that address cost or funding limits.

Q10: What cost pool should this cost be charged to?

A10: We recommend that the paid leave costs be charged to a newly created cost category, Other Direct Costs (ODC) COVID-19. Costs from ODC-COVID-19 may be allocated to the applicable contracts based on some reasonable, agreed upon allocation. In some situations, it may be more appropriate to charge these costs through indirect cost pools (overhead, G&A, etc.). In either case, the contracting officer should work with DCMA/DACO/ACO as appropriate and the contractor to determine how the costs should be charged to the contracts.

By creating a new category of costs, any potential issues with disclosed accounting policies and procedures, cost accounting standards, or a contractor’s cost accounting standards disclosure statement may be avoided. Expect further guidance in this area.

Q9: Should the costs of leave made allowable by section 3610 be charged as direct or indirect?

A9: This should be discussed and resolved between the contractor and the contracting officer for each contractor or business unit. In most cases, the cost is not likely to be directly identified to a particular contract, and would meet the definition of “indirect cost.” There may be circumstances in which the cost can be directly identified with particular contracts. Coordination with the Defense Contract Management Agency (DCMA) through the applicable Divisional Administrative Contracting Officer (DACO)/Administrative Contracting Officer (ACO) is recommended to ensure consistency. We expect further additional guidance to be added in this area.

Q8: Isn’t paid leave an allowable cost under contracts anyway?

A8: Some paid leave is an allowable cost under the cost principles of FAR 31.2, specifically FAR 31.205-6(m). However, it is likely contractors may not have an established provision in their compensation plans for granting leave for the specific purposes stated in section 3610 of the CARES Act and, without such a provision, leave of that kind would normally not be an allowable cost. It is important that contractors segregate costs that would be allowable under existing Cost Principles from leave costs that are only allowable if the leave complies with this new cost principle, to provide a basis for audit and allowability determinations.

Q7: Many work sites remained open and available. However, what about contractor personnel that have child care issues due to school closures, those on leave to care for

themselves or others due to contracting COVID-19, or employees under quarantine because of actual or potential exposure?

A7: There may be cases where the work sites are open and accessible, but, for public health reasons or family care issues, contractor employees cannot be in the workplace and cannot otherwise work remotely. As established in Office of Management and Budget (OMB) guidance and echoed within the DoD, contractors are part of the total force of military and civilians (both government and contractor personnel) and are required to ensure a safe work environment, balanced with the need for continued mission support and readiness.

Therefore, contractor employees who did not report to an open work site due to the COVID-19 pandemic may be viewed as being kept in a “ready” state if all other criteria under Section 3610 have been met. Section 3610 provides considerable discretion to treat paid leave as an allowable cost. However, contractors also bear the burden of supporting any claimed costs, including claimed leave costs for their employees, with appropriate documentation. In seeking a determination of affected contractor status that would make this new cost principle applicable, a contractor must also identify any applicable credits it is allowed under the CARES Act or Division G of Public Law 116-127 that will reduce reimbursements.

Q6: What does the section 3610 mean by “a site that has been ‘approved’ by the Federal Government”?

A6: Section 3610 states: “Such authorities shall apply only to a contractor whose employees or subcontractors cannot perform work on a site that has been *approved* by the Federal Government, including a federally-owned or leased facility or site...”

The approved work site is the contractor’s location and any other places of performance specifically identified in the contract. This includes any contractor or subcontractor facility at which contract administration services are performed in support of those contracts or that has been cleared by the National Industrial Security Program (NISP) Contract Classification System (NCCS) on a DD form 254 or electronic equivalent. Depending on the contract, it may include multiple work sites and/or locations.

Q5: Is it possible to request advance payments using this clause?

A5: No, the deviation does not apply to advance payments.

Q4: When is the Deviation effective? Does it apply only to new contracts?

A4: The deviation is effective immediately and could apply to contracts in place from January 31, 2020, through September 30, 2020.

Q3: I have a contract with a nontraditional supplier utilizing Other Transaction Authority (OTA), would this deviation apply to my contract?

A3: The language in section 3610 provides the authority to “modify the terms and conditions of a contract, or other agreement,” to include Federal Acquisition Regulation (FAR) based contracts and other forms of agreements like OTAs. While OTAs are not FAR based actions, they are contracts or other agreements within the meaning of section 3610. The same principles of the deviation may be applied by the agreements officer to resolve COVID-19 impacts on an OTA.

Q2: What should be considered in assessing and negotiating requests for equitable adjustment of contracts under section 3610?

A2: Contractor requests for determinations of affected contractor status that would make the new cost principle applicable should describe the actions the contractor has taken to continue performing work under the contract, the circumstances that made it necessary to grant employee leave, an explanation of why it was not feasible for employees to continue performance via telework or other remote work, and how the leave served to keep employees in a ready state. Where the contractor is considered part of the essential critical infrastructure workforce, as described in the Defense Pricing and Contracting Memo, Defense Industrial Base Contract Considerations, dated March 20, 2020, or when the contractor was directed to implement the Continuation of Essential Services Plan in the contract, the contractor must demonstrate that all reasonable efforts were made to continue contract performance.

Contractor requests made in relation to this deviation must be considered on a case-by-case basis, in consideration of the particular circumstances of each contract, including, among other things, the impacts realized from COVID-19, Defense Industrial Base telework or remote work efforts, the availability of funds for reimbursement, applicable laws and regulations, and any relief the contractor has secured or may secure through the CARES Act and/or other laws enacted in response to this national emergency.

Q1: When would Class Deviation – CARES Act Section 3610 Implementation not be appropriate for consideration?

A1: Pursuant to this deviation, the new cost principle is inapplicable 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.

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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.



Kevin P. Meiners
Deputy Director of National Intelligence for
Enterprise Capacity



Date

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(U) Notice to Contractors Regarding COVID-19 (Novel Coronavirus) Update – CARES Act Guidance, COVID Code Orange Contract List

(U) Tuesday, 31 March 2020

(U) CARES Act Guidance

(U) On 27 March 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (CARES), Public Law 116-136. This Act provides both the private and the public sector meaningful assistance associated with the coronavirus pandemic. Section 3610 of the CARES Act specifically provides relief to our industry partners that we work with on a daily basis.

(U) Effective 27 March 2020, subject to the availability of appropriations, contractors who are working under reduced manning at an Agency site(s) may be reimbursed at the minimum applicable contract billing rates, not to exceed an average of 40 hours per week of any paid leave (including sick leave), that a contractor may provide to keep its employees or subcontractors in a ready state, including to protect the life and safety of Government and contractor personnel. This authorization will remain in effect until such time as the Agency is operating under normal conditions, but in no event will go beyond September 30, 2020. This authorization shall apply only to a contractor whose employees or subcontractors cannot perform work on a site that has been approved by the Agency, including an Agency-owned or leased facility, due to facility closures or other restrictions, and who cannot telework because their job duties cannot be performed remotely during the public health emergency declared on January 31, 2020 for COVID-19. The maximum reimbursement authorized by Section 3610 shall be reduced by the amount of credit a contractor is allowed pursuant to division G of Public Law 116-127 and any applicable credits a contractor is allowed under the CARES Act.

(U) For all Cost Reimbursement, Time and Materials, Labor Hour, and Fixed Price Level of Effort contracts, contractors shall separately track all paid leave by labor category by TTO associated with COVID-19 from actual hours worked, and shall separately identify those hours in a supporting document attached to applicable invoices. Further instructions for invoicing will be provided at a later date.

(U) As a reminder, telework by contractor personnel at private residences is not permitted for any work directly charged to an Agency contract at this time.

(U) COVID Code Orange Contract List

(U) In the event the Agency moves to COVID Code Orange, attached to this ARC announcement is the COVID Code Orange Contract List as of 31 March 2020. Any updates to this list will be posted on the ARC as we further identify additional functions that will continue under code orange. Contractors listed on the COVID Code Orange Contract List would be expected to report as scheduled. All others not included on the list shall be prepared to report within 2 hours of being called in to support mission functions.

(U) In addition, in the event of a COVID Code Orange and unless otherwise notified by a MPO Contracting Officer, all source selections and competitive proposals will be suspended until further notice. Contracting Officers will notify vendors with an updated milestone schedule or revised proposal due date within 14 calendar days after the Agency returns to normal operating conditions. Please direct any specific questions to the Contracting Officer (CO) or the COs management chain for the applicable Request for Proposals.

(U) We understand these are challenging times and value everyone's commitment to the mission.

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National Reconnaissance Office
Director, Office of Contracts
Notice to Industry Partners

Notice 2020-02-10

31 March 2020

Subject: (U) NRO Information for Coronavirus (COVID-19) Pandemic for the NRO Contractor Workforce

A. (U) General.

1. (U//FOUO) The Director, NRO will host an industry partner all-hands telecom on Friday April 3rd, 2020. Industry partner participants should be authorized to represent the company. The telecom will be classified, more information about call-in number and time will be posted via the NRO ARC and Office of Contracts website when it becomes available.

B. (U) General Direction and Guidance.

1. (U) Implementation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act

(U//FOUO) Effective immediately, the NRO will begin implementation of HR 748, Section 3610 of the CARES Act (enclosure (1)). The CARES Act allows reimbursement to Contractors for their contractor employees for any paid leave, including sick leave that keeps contractor employees in a ready state, providing the following:

- a. (U) The 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
- b. (U) The employee is unable to telework because the duties cannot be performed remotely
- c. (U) Not to exceed an average of 40 hours per week per employee
- d. (U) Reimbursed at the minimum applicable contract billing rate
- e. (U) 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

(U) Contractors shall segregate the time billed under this authority to allow for future review and analysis of COVID-19 related expenses. The NRO may require all NRO Contractors to report this segregated information under a future deliverable of their contract.

(U) This authority expires September 30, 2020.

(U) The NRO will begin implementation of this Act and issue further guidance as details become available including guidance on how to bill under current NRO contracts.



Mark C. DeVido
Director, Office of Contracts

(U) Enclosures:
(U) (1) H.R. 748 SEC. 3610

(U) Enclosure 1

(U) HR 748 SEC. 3610. FEDERAL CONTRACTOR AUTHORITY.

(U) Notwithstanding any other provision of law, and subject to the availability of appropriations, funds made available to an agency by this Act or any other Act may be used by such agency to modify the terms and conditions of a contract, or other agreement, without consideration, to reimburse at the minimum applicable contract billing rates not to exceed an average of 40 hours per week any paid leave, including sick leave, a contractor provides to keep its employees or subcontractors in a ready state, including to protect the life and safety of Government and contractor personnel, but in no event beyond September 30, 2020. Such authority shall apply only to a contractor whose employees or subcontractors cannot perform work on a site that has been approved by the Federal Government, including a federally-owned or leased facility or site, due to facility closures or other restrictions, and who cannot telework because their job duties cannot be performed remotely during the public health emergency declared on January 31, 2020 for COVID-19: *Provided*, That the maximum reimbursement authorized by this section shall be reduced by the amount of credit a contractor is allowed pursuant to division G of Public Law 116-127 and any applicable credits a contractor is allowed under this Act.

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DEFENSE INTELLIGENCE AGENCY

WASHINGTON, D.C. 20340-



DIA Industry Bulletin
COVID-19 Update – Coronavirus Aid, Relief and Economic Security Act (CARES)

The purpose of this bulletin is to further educate industry on the Coronavirus Aid, Relief and Economic Security Act (CARES), Public Law 116-136, and the implications to DIA's contracting vehicles. The CARES Act provides assistance associated with the coronavirus pandemic. Section 3610 of the Act specifically provides relief to industry partners that collaborate with DIA on a daily basis.

Effective 27 March 2020, subject to the availability of appropriations, contractors who are working under reduced manning at an Agency site(s) may be reimbursed at the minimum applicable contract billing rates, not to exceed an average of 40 hours per week of any paid leave, including sick leave, that a contractor provides to keep its employees or subcontractors in a ready state, including to protect the life and safety of Government and contractor personnel.

This authorization shall remain in effect until the Agency returns to normal operations; however, in no event will extend beyond 30 September 2020. This authority shall apply only to a contractor whose employees or subcontractors cannot perform work on a site that has been approved by the Federal Government, including a federally-owned or leased facility or site, due to 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 for COVID-19: Provided, that the maximum reimbursement authorized by this section shall be reduced by the amount of credit a contractor is allowed pursuant to division G of Public Law 116-127, and any applicable credits a contractor is allowed under the CARES Act.

To ensure compliance with division G of Public Law 116-127, and Section 3610 of the Act, contractors shall be required to include a certification with each invoice that states the following:

I certify all charges tendered in this invoice have not, and will not receive credit for the amount requested pursuant to division G of Public Law 116-127 or any credits allowed under the Coronavirus Aid, Relief and Economic Security Act (CARES), Public Law 116-136.

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

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(Corporate Certifying Official's Name)

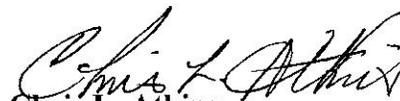
(Title)

Date

For all Cost Reimbursement, Time and Materials, Labor Hour and Fixed-Price Level-of-Effort contracts, contractors intending to request reimbursement pursuant to the CARES act should separately track all paid leave by labor category associated with COVID-19 and subject to CARES Act reimbursement, from actual hours worked. Contractors shall separately identify COVID-19 applicable telework hours in a separate annex and affix it to applicable invoices. Contractors are reminded, that pursuant to DARSI clause 5552.231-9002 – *Hours of Operation and Holiday Schedule*:

- Contactor personnel may work from an Agency authorized alternate work location, including from home, only if approved by the Contracting Officer or their designee.
- Contractors shall follow their disclosed charging practices during the period of performance and not follow any verbal directions to the contrary.
- Contractors shall continue to accrue, allocate and bill for costs consistent with their disclosure statement or approved accounting practices – See FAR 52.230-2 – *Cost Accounting Standards*, & 52.230-3 – *Disclosure and Consistency of Cost Accounting Practices*.

To ensure equitable treatment and maximize new latitudes instituted by the Office of the Secretary of Defense, DIA previously issued a global modification that incorporated DARSI clause 5552.231-9002 in all contractual instruments, relaxed restrictions on place of performance and maximized telework. For additional guidance, industry should reference DIA's *COVID-19 General Contracting Frequently Asked Questions* attached to this bulletin. Contractors are reminded the CARES Act is discretionary and it allows but does not require the Agency to modify contracts, without consideration, to allow for this reimbursement. The information in this bulletin is subject to change pending further policy or regulatory guidance on the implementation of Section 3610 of the CARES Act. DIA thanks our industry partners for their enduring flexibility and unyielding support.


Chris L. Atkins
Senior Procurement Executive
Defense Intelligence Agency

Attachment: DIA COVID-19 General Contracting Frequently Asked Questions

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DEFENSE INTELLIGENCE AGENCY

WASHINGTON, D.C. 20340-



COVID-19 - General Contracting Frequently Asked Question (FAQs)

The purpose of the FAQ is to provide guidance and preemptively address anticipatory inquiries from the contractor workforce. While not intended to address every eventuality, the FAQ purposes to highlight governing clauses and provide responses to known questions. Please direct any questions not addressed herein to the cognizant Contracting Officer.

Frequently Asked Questions:

Q1. What if the Government closes the facility where I perform the work?

A1. Response: Contractor personnel not providing essential contractor services shall not report to the facility. And, the Contracting Officer will make the determination of cost allowability for time lost due to facility closure in accordance with the FAR, applicable Cost Accounting Standards, the Contractor's established accounting policies, and the terms of the contract. Those contractor personnel who take leave shall not direct charge the non-working hours to the Contract. Contractors must comply with local command guidance, company policy and the Contracting Officer's direction. Ref DARSI Clause 5552.231-9002 (e) & (i)

Q2. What if the Government closes the facility during the duty day?

A2. Response: Contractor personnel already present at the facility that are not performing essential contractor services will be dismissed and shall leave the facility. The Contracting Officer will make the determination of cost allowability for time lost due to facility closure in accordance with the FAR, applicable Cost Accounting Standards, the Contractor's established accounting policies, and the terms of the contract. Those contractor personnel who take leave shall not direct charge the non-working hours to the Contract. Contractors must comply with local command guidance, company policy and the Contracting Officer's direction. Ref DARSI Clause 5552.231-9002 (f) & (i)

Q3. If my primary facility is closed, may I work from an alternate location?

A3. Response: Contactor personnel may work from an Agency authorized alternate work location, if approved by the Contracting Officer or their designee. Ref DARSI Clause 5552.231-9002 (g)

Q4. What if I do not want to work from the Contracting Officer approved alternate work facility?

A4. Response: Contractor personnel must take leave in accordance with their Contractor's policies. Ref DARSI Clause 5552.231-9002 (g)

Q5. Does billing change if an employee is quarantined and unavailable to execute the requirements of the contract?

A5. Response: Contractors shall follow their disclosed charging practices during the period of performance and not follow any verbal directions to the contrary. [Contractors shall continue to accrue, allocate and bill for costs consistent with their disclosure statement or approved accounting practices – See FAR 52.230-2 – *Cost Accounting Standards*, & 52.230-3 – *Disclosure and Consistency of Cost Accounting Practices*. Consult with the company program manager and the cognizant Contracting Officer for definitive guidance and resolution.] Ref DARSI Clause 5552.231-9002 (i)

Q6. If a contractor employee is required to go on official travel, and then has to be quarantined, will the contractor be reimbursed for the period quarantined?

A6. Response: Remuneration shall be predicated on the contract type and the contractor's disclosed charging practices. Contractors shall follow their disclosed charging practices during the contract period of performance, and shall not follow any verbal directions to the contrary. Consult with the cognizant Contracting Officer for guidance and resolution. Ref DARSI Clause 5552.231-9002 (i)

Q7. What are the government's payment obligations if a contractor is unable to perform?

A7. Response: Government payment obligations will be directly tied to the type of contract and the terms of the contract. For instance, if the contractor has a firm-fixed priced contract that provides payment upon completion of a deliverable and the contractor has completed the deliverable, the contractor should be paid. If the contract is one for time and material or cost reimbursable, however, and individuals did not work because of the virus, the government may have the right to reduce its payments to the contractor. There are a number of potential outcomes and all of these things would require a careful review of each government contract. Consult with the cognizant Contracting Officer for guidance and resolution.

Q8. What if my contract requires me to remain in affected areas and provide mission essential services?

A8. Response: If your contract contains clause 252.237-7023; – *Continuation of Essential Contractor Services*, the contractor should evaluate the commitments resident in attendant Mission-Essential Contractor Services Plan (MECSP). Following review, consult with the cognizant procuring contracting officer to ensure

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that only those individuals required to perform the mission essential services in the MECSP are utilized until normal contract performance has been reconstituted. Consult with the cognizant contracting officer to ensure clarity of expectations on execution of mission essential requirements.

Q9. What if a contractor employee was on official or non-official travel and must quarantine due to COVID-19?

A9. Response: Contractors shall adhere to company policies and accounting practices for costs associated with illness-related absences. Consult with the cognizant contracting officer for definitive guidance and clarification.

Q10. How do we know what contracts, travel or services are deemed mission essential?

A10. Response: Recommend contractors review all contracts to ascertain if they contain DFARS clause 252.237-7023 – *Continuation of Mission Essential Contractor Services*. Additionally, contractors should review Section C for the attendant Statement of Work, Performance Work Statements or Statement of Objectives; Section H, Special Contract Provisions and Section I, Contract Clauses to conclude if other clauses or provisions stipulate the contractor provide continuity of mission critical services. Consult with the cognizant contracting officer for definitive guidance and clarification.

Q11. We have a critical mission and a few of our contractor staff must be quarantined, can we request a replacement?

A11. Response: Contractors shall adhere to the staffing requirements codified in the contract.

Q12. Our workforce is on quarantine due to potential exposure, can we request additional contractor staff to support?

A12. Response: Contractors should review the hiring and staffing protocols delineated in their SOW/PWS/SOO and consult with the cognizant contracting officer for definitive guidance.

Q13. What if Contractors refuse to go on mission essential travel?

A13. Response: Contractor shall employ their contingency plans to fulfill the requirements stipulated in the contract. Failure to perform the work may result in adverse consequences for the contractor. Consult with the cognizant contracting officer for definitive guidance.

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Q14. If contractors have a secure site, may contractor staff work from the site due to concerns about COVID 19?

A14. Response: Contactor personnel may work from an Agency authorized alternate work location, if approved by the Contracting Officer or their designee. Be advised, any secure site must be approved by DIA Security and incorporated into the contract via a DD 254. Ref DARS Clause 5552.231-9002 (g)

Q15. Are Contractors allowed to Telework during their quarantine period due to COVID 19?

A15. Response: Contactor personnel may work from an Agency authorized alternate work location (including from home), **only if approved** by the Contracting Officer or their designee. Ref DARS Clause 5552.231-9002 (g)

Q16. What if I have medical questions or desire the most current information on COVID-19?

A16. Response: Contractors are encouraged to consult with their company representatives, review guidance published by the [Centers for Disease Control and Prevention](#) and adhere to notifications promulgated by DIA's Surgeon General. For additional information and updates, visit the [Coronavirus Integration and Coordination Group \(CICG\)](#) website or the coronavirus link on the [DIA Daily](#). The CICG may be reached at 202-231-4300 or NSTS 910-1619; and Tandberg 912-5851.

Additional Questions and Answers (18 Mar 20)

Q17. What happens when a contractor employee chooses to self-identify as being in a high risk category? Does the contractor employee report to work in a government facility?

A17. Response: Contractor employees who wish to self-identify as being in a high risk category should make that disclosure to their employer. If the employer elects to allow the employee not to work, then the employer should notify the contracting officer to make arrangements regarding what adjustments need to be made to the contract's terms, conditions, and price/cost.

Q18. If we have unclassified work, can our Contractors work from home? Can they work from a Contractor site?

A18. Response: Yes, Contactor personnel may work from an Agency authorized alternate work location including from home, only if approved by the Contracting Officer or their designee. COR's and managers must ensure that there is sufficient

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work for Contractors to complete from the alternate work site. Ref DARSI Clause 5552.231-9002 (g)

Q19. Can the Government mandate Contractors to work shifts?

A19. Response: Only if shift work is already included in the terms and conditions or the Statement of Work of the contract. However, work with the Contracting Officer to determine whether the contract can be modified to allow for shift work at no cost. If there is a cost associated, the requirements office must determine the need and approve additional costs. CORs should communicate with their chain of command on requirements for shiftwork.

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**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, one to incorporate the Advance Agreement into the contract and one to close the Advance Agreement (e.g. reconciliation of cost and impact to service or deliverable) after a return to normal operations.

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 the CARES Act, the work stoppage shall not be before the declaration of the health emergency, January 31, 2020 for COVID-19 and cannot be later than September 30, 2020.

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.