



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 2020-00013 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,
gregory.d.snyder.civ@mail.mil; for pricing is Ms. Sara Higgins,
sara.a.higgins2.civ@mail.mil; and for Wide Area WorkFlow is Mr. Bruce Propert,
david.b.propert2.civ@mail.mil.

Kim Herrington,
Acting Principal Director,
Defense Pricing and Contracting