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Valued Supply Chain Partners,

In response to the COVID-19 pandemic, Northrop Grumman continues to broadly share information that may be valuable to our supply chain partners. The Office of the Under Secretary of Defense has issued class deviations (reference included attachments) that provide updated guidance to the implementation of CARES Act Section 3610. These guidance documents provide specific details regarding the process for subcontractors to submit reimbursement requests along with updated criteria on eligibility.

We encourage our suppliers to review the DoD's guidance accordingly. Should you have any questions regarding your company's intent to submit a reimbursement request, please contact your local buyer or subcontracts professional.

Thank you for your collaboration and continued partnership.

Attachments:

1. Office of the Under Secretary of Defense Memorandum, Class Deviation – CARES Act Section 3610 Implementation, DARS Tracking Number 2020-O0013, Revision 1
2. Office of the Under Secretary of Defense Memorandum, Class Deviation –Section 3610 Reimbursement Requests, DARS Tracking Number 2020-O0021



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION
AND SUSTAINMENT

In reply refer to
DARS Tracking Number: 2020-O0013, Revision 1

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

Effective immediately, this class deviation revises and supersedes Class Deviation 2020-O0013 issued on April 8, 2020. The purpose of this revision is to reiterate the statement that reimbursements under section 3610 are subject to the availability of funds and change the start date of the time period for which paid leave must be taken to be eligible for reimbursement under section 3610. In the attachment to this deviation, a new paragraph (b)(7) is added at DFARS 231.205-79 to clarify that the allowable amount under this deviation is limited to the amount of funds obligated on a separate line item specifically for the purpose of reimbursement under section 3610. Where appropriate, the time period for which paid leave must be taken is changed from January 31, 2020, through September 30, 2020, to March 27, 2020, through September 30, 2020.

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 from March 27, 2020, through September 30, 2020, 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.

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 March 27, 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 March 27, 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 no earlier than March 27, 2020, and no later than 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.
- (7) The allowable amount is limited to the amount of funds specifically obligated on a separate line item that cites the purpose of the funds is for reimbursement under section 3610 of the CARES 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-O0021

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—Section 3610 Reimbursement Requests

Effective immediately, contracting officers shall follow the guidance provided in this class deviation when reviewing and processing contractor requests for reimbursement under section 3610 of the Coronavirus Aid, Relief and Economic Security (CARES) Act (Pub. L. 116-136). Section 3610 authorizes, but does not require, contracting officers to modify contracts and other agreements, without consideration, to reimburse contractors for paid 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 on January 31, 2020, for Coronavirus Disease 2019 (COVID-19). Class Deviation 2020-O0013, CARES Act Section 3610 Implementation, issued on April 8, 2020, and revised on August 17, 2020, established DFARS 231.205-79, CARES Act Section 3610 - Implementation, as a framework for contracting officers to use when implementing the authority of section 3610.

In accordance with Office of Management and Budget Memorandum M-20-27, Additional Guidance on Federal Contracting Resiliency in the Fight Against the Coronavirus Disease (COVID-19), dated July 14, 2020, the effective date of section 3610 is March 27, 2020, which is the date the CARES Act was enacted into law. Section 3610 does not contain language to provide retroactive coverage, as a matter of law; therefore, the authority conferred by section 3610 does not apply to reimbursements for paid leave provided prior to March 27, 2020.

Section 3610 does not prohibit the Department from reimbursing a contractor for paid leave prior to March 27, 2020, using contract authorities otherwise available to the Department; therefore, contracting officers may, at their discretion, consider reimbursing such paid leave costs as other COVID-19 related costs. For additional guidance on the reimbursement of other COVID-19 related costs not authorized under section 3610, refer to Defense Pricing and Contracting (DPC) Memorandum, Guidance for Assessment of Other COVID-19 Related

Impacts and Costs, dated July 2, 2020. Any reimbursement for paid leave provided prior to March 27, 2020, should not be identified as a payment made under section 3610 for purposes of tracking and reporting.

A. Notice of Intent to Request Reimbursement under Section 3610: Early Engagement

If a contractor contacts a contracting officer about its intent to submit a request for reimbursement under section 3610, early discussions may be beneficial. These early engagements may be used to review the requirements of this guidance and which of the attached checklists is appropriate to use in conjunction with the contractor's section 3610 reimbursement request. These early engagements may also address the following:

- The information required by the class deviation, including the checklist(s);
- The requirement that the contractor's status as an affected contractor must be established by the contracting officer in writing, in order for the contractor to receive reimbursement under section 3610;
- Whether funding is available for the section 3610 reimbursement request;
- What costs are and are not authorized in a section 3610 reimbursement request;
- The expected submission frequency of the section 3610 reimbursement requests; and
- The contractor's estimate of the amount of its section 3610 reimbursement request.

No section 3610 reimbursements shall be made to a contractor unless and until funds are available for reimbursement of section 3610 costs. That funds may be legally available for reimbursement under section 3610, among other purposes, does not imply or require that such funds must be used for section 3610 reimbursements. Until such time as a section 3610 reimbursement request is submitted by the contractor and evaluated by the contracting officer, any discussion of the availability of funds is notional and for planning purposes only.

A final decision of affected contractor status and the amount of section 3610 reimbursement, if any, will be made only after submission and analysis of each section 3610 reimbursement request, including subsequent requests.

B. Submission of Requests for Reimbursement under Section 3610

A contractor may submit a section 3610 reimbursement request for a single contract, multiple contracts, or an entire business unit (or segment) level. Notwithstanding to whom a contractor submits its request, the Department may choose to address a section 3610 reimbursement request at any level in any DoD Component for any reason, including administrative convenience. Further, the Department may unilaterally decide to group together separate requests.

Three checklists are provided in the attachments to this class deviation to provide the type of information the contracting officer may need to assess a contractor's section 3610 reimbursement request. These checklists provide guidance for processing reimbursement requests and may be tailored, at the contracting officer's discretion, to fit specific circumstances. For example, a contracting officer may require a contractor to provide additional information

necessary to assess its eligibility to receive a reimbursement under section 3610, verify the accuracy and allocability of incurred costs, or ensure that the contractor is not paid or reimbursed for the same costs via any other source.

The attached checklists are:

- *Abbreviated Reimbursement Checklist* (Attachment 1). Guidance for section 3610 reimbursement requests when the request applies only to reimbursement under a single contract of direct charged employees provided with paid leave, and the amount of reimbursement requested is below \$2,000,000 in total. This checklist may also be used in conjunction with either the multipurpose or global reimbursement checklist for subcontractor reimbursement requests that meet the conditions of this checklist. Section 3610 reimbursement requests meeting these conditions should be provided to the contracting officer.
- *Multipurpose Reimbursement Checklist* (Attachment 2). Guidance for section 3610 reimbursement requests that apply to a single contract, when Attachment 1 is not applicable, or to multiple contracts when Attachment 3 is not being used. Section 3610 reimbursement requests using this checklist should include homogeneous groups of contracts, such as contracts for a single program or with a single contracting activity or DoD Component. Section 3610 reimbursement requests meeting these conditions should be provided to a contracting officer in the applicable contracting activity or Component. At their discretion, when multiple contracts are involved, contracting activities or DoD Components may appoint a lead contracting officer to ensure consistency and efficiency in considering the section 3610 reimbursement request.
- *Global Reimbursement Checklist* (Attachment 3). Guidance for section 3610 reimbursement requests that seek a global reimbursement at a business unit (or segment) level (see Attachment 3). Section 3610 reimbursement requests meeting these conditions should be provided to the contractor's assigned Cognizant Federal Agency Official (CFAO).

A contractor may also choose to submit subsequent section 3610 reimbursement requests for additional paid leave costs incurred after the initial section 3610 reimbursement request, so long as the paid leave was provided no later than September 30, 2020. Contractors should use a consistent methodology in calculating the quantum of the section 3610 reimbursement request. In no event should a contractor receive multiple reimbursements for the same incurred costs.

Section 3610 reimbursement requests may be inclusive of both cost-type and fixed-price contracts. The contractor is responsible to properly support the impacts to each contract included in any section 3610 reimbursement request. A contractor's initial section 3610 reimbursement request should cover the period from the latter of the date that the contractor began providing paid leave reimbursable under section 3610 or March 27, 2020, through the close of the latest accounting cycle prior to the contractor's section 3610 reimbursement request. For example, if a company began providing section 3610 paid leave on March 27, 2020, and incurs paid leave costs through July 31, 2020, the company should provide sufficient information for the costs

incurred from March 27, 2020, through July 31, 2020, to support an initial section 3610 reimbursement request in August 2020. Subsequent section 3610 reimbursement requests should be coordinated with the contracting officer, prior to submission, and submitted in a similar manner to the initial section 3610 reimbursement request.

Reimbursements under section 3610 are limited to the costs incurred by the contractor allocable to its DoD contracts, including applicable subcontractor costs allocable to DoD contracts. Reimbursements under section 3610 shall not include costs incurred by the contractor allocable to work performed as a subcontractor. Any requests for reimbursement of section 3610 paid leave costs incurred as a subcontractor should be submitted to the appropriate prime contractor.

A contractor's section 3610 reimbursement request should include any of its subcontractors' section 3610 reimbursement requests for the same time period for the same contracts. Contracting officers shall only consider subcontractor section 3610 reimbursement requests that are submitted through the prime contractor. The contracting officer should require the prime contractor to evaluate each subcontractor's section 3610 reimbursement request and provide, with its own section 3610 reimbursement request, an opinion as to whether the subcontractor is an affected contractor and, if so, its analysis of the subcontractor's paid leave costs allowable under section 3610.

The contracting officer should review the contractor's evaluation of each subcontractor's submission requesting section 3610 reimbursement, and the contractor should provide, with its own section 3610 reimbursement request, an opinion to the contracting officer as to whether the subcontractor is an affected contractor and, if so, its analysis of the subcontractor's paid leave costs allowable under section 3610. If the subcontractor does not routinely provide similar information to the contractor, the subcontractor should provide the amount of section 3610 reimbursement it is requesting to the contractor for inclusion in the contractor's section 3610 reimbursement request and submit all other supporting information directly to the contracting officer under separate cover.

A contractor is required to segregate and report the actual amounts of section 3610 paid leave costs within its accounting system to support any requests for reimbursement. Contracting officers should advise contractors that the Government may audit the billed section 3610 costs in order to ensure the accuracy and compliance with section 3610. Additionally, contractors must comply with Cost Accounting Standards (CAS) for CAS-covered contracts, or FAR 31.203 for non-CAS covered contracts, in order to be reimbursed for section 3610 costs. Contracting officers may verify a contractor's compliance with CAS in order to properly determine the Department's share of the paid leave costs and the amounts allocable to Department contracts and subcontracts to which the costs are allocable.

Contracting officers shall require contractors to provide a representation with each section 3610 reimbursement request, as follows:

- All paid leave included in the request for reimbursement was specifically paid to keep the employees and/or subcontractors in a ready state;

- The contractor segregated and reported the actual costs of the section 3610 paid leave payments, traceable to the individual employee charges;
- The section 3610 reimbursement request excludes any paid leave costs associated with the contractor's work as a subcontractor to another contractor;
- All impacted subcontractors have been afforded an opportunity to submit a request for reimbursement of section 3610 paid leave costs, and eligible subcontractor section 3610 reimbursement requests received and as appropriate are incorporated into the contractor's section 3610 reimbursement request for the contractor to pay to the subcontractor;
- The section 3610 reimbursement request has been reduced by any applicable credits or loan forgiveness the contractor has received that is/are specifically identifiable to the public health emergency declared on January 31, 2020, for COVID-19;
- The costs included in the section 3610 reimbursement request have not been requested elsewhere in another section 3610 reimbursement request; and
- The section 3610 reimbursement request is made in good faith, and the supporting data is accurate and complete to the best of the contractor's knowledge.

Any exceptions a contractor makes to the content of the above representations should be explained within its section 3610 reimbursement request. The representation should be dated and include the signature and title of a designated individual within the company with the authority to sign and commit on behalf of the contractor. Any subcontractors included in a contractor's section 3610 reimbursement request should also provide to the contractor the same representations with its reimbursement request. Contracting officers shall document their reliance on the contractor's representation in the contract file.

C. Affected Contractor

In accordance with Class Deviation 2020-O0013, contracting officers shall establish, in writing, a contractor's status as an affected contractor prior to authorizing the reimbursement of paid leave costs under the authority of section 3610 for a particular contract and a specific time period. The contracting officer shall establish whether the contractor has incurred costs to provide paid leave for its employees or subcontractors to maintain its workforce in a ready state and otherwise meets all of the requirements of section 3610. The time period for reimbursement of paid leave for an affected contractor under section 3610 is March 27, 2020, through September 30, 2020.

In order to verify that a contractor is an affected contractor, contracting officers must be able to conclude, upon review of a contractor's section 3610 reimbursement request, the following:

- The contractor has provided paid leave to its employees or subcontractors to maintain a ready state, including to protect the life and safety of Government and contractor

personnel, during the public health emergency declared on January 31, 2020, for COVID-19. Any paid leave provided prior to March 27, 2020, is ineligible for reimbursement under section 3610. All paid leave costs requested for reimbursement under section 3610 must have been incurred by the contractor or subcontractor and paid by the employer to the employee during the period of the reimbursement request.

- The reimbursement request does not include paid leave to which an employee was otherwise entitled (e.g., leave that the employee has earned or is provided through company policy, employment contract, or labor agreement);
- The section 3610 paid leave was provided to, and taken by, the employees no earlier than March 27, 2020, and no later than September 30, 2020;
- The leave was paid to contractor employees or subcontractor employees who could not perform work due to facility closures or other restrictions (e.g., quarantine due to exposure to persons infected with COVID-19 or travel restrictions when travel is required for contract performance) during the public health emergency declared for COVID-19;
- The contractor employees or subcontractor employees were unable to telework, because their job duties could not be performed remotely; and
- The section 3610 reimbursement request does not result in a total of paid work and paid leave charges for any contractor or subcontractor employee exceeding an average of 40 hours per week per employee.

Contracting officers shall document the basis for establishing that a contractor is an affected contractor in the contract file and include an affirmative statement of the contractor's affected status in the contract modification (see section F below).

D. Determination of Reimbursement Amount

The determination of the reimbursement amount shall be based on the contracting officer's review of the information provided in the contractor's section 3610 reimbursement request and the criteria in this class deviation and Class Deviation 2020-O0013.

In no event shall a reimbursement under section 3610 include profit or fee on any contractor or subcontractor paid leave costs. Reimbursement shall be made at the appropriate rates for the work performed under the contract. The contracting officer shall document the rationale for the amount eligible for section 3610 reimbursement, including any limitations due to available funding, in the contract file.

The maximum reimbursement a contractor is authorized to receive under section 3610 shall be reduced by the amount of loan forgiveness a contractor receives pursuant to division G of the Families First Coronavirus Response Act (Pub. L. 116-127) or under the CARES Act (Pub. L. 116-136), or any other credit allowed by law that is specifically identifiable with the

public health emergency declared on January 31, 2020, for COVID–19. See also FAR 31.201-5 and section G below.

E. Availability of Funds for Reimbursement under Section 3610

Any reimbursement provided under the authority of section 3610 is subject to the availability of funds. Section 3610 reimbursements need not be funded only with CARES Act appropriations. Funds that are otherwise legally available for use under a contract may be used to fund a section 3610 reimbursement under that contract. The decision to provide available funds for section 3610 reimbursement is at the Department’s discretion. The Department may choose not to provide funds for section 3610 reimbursement under any particular contract, in which case no reimbursement will be made under such contract.

F. Contract Modifications

Once a contracting officer has established that a contractor is an affected contractor, determined the amount eligible for reimbursement, and validated availability of funds, the contracting officer shall modify the affected contract(s) to provide for the section 3610 reimbursement.

Regardless of the type of contract, a section 3610 bilateral contract modification shall:

- Cite section 3610 of the CARES Act as authority for the modification;
- Include the following (or similar) statement in the preamble of the modification “Because I have established that the contractor is an ‘affected contractor’ for the period of [*insert inclusive dates*] in accordance with section 3610, Federal Contractor Authority, of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136), the contract is modified as follows”;
- Specify the time period for which section 3610 paid leave costs are being reimbursed;
- If subcontractor leave is included in the section 3610 reimbursement, specify the amount to be reimbursed to each affected subcontractor; and
- Incorporate the contract clause provided in Attachment 4 of this class deviation, which requires the contractor to notify the contracting officer of any credits or loan forgiveness the contractor receives for the same paid leave costs being reimbursed in the modification.

To ensure traceability, it is critical that the contract and supporting documentation clearly identify reimbursement costs paid to contractors under the authority of section 3610, as well as how such costs are identified, segregated, recorded, invoiced, and reimbursed. Guidance on the requirement to create dedicated line items to ensure proper tracking and reporting of section 3610 reimbursements can be found in the DPC memorandum, Implementation Guidance for Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act, dated April 9, 2020.

In executing the contract modification, contracting officers may create a firm-fixed price line item for section 3610 reimbursement to allow the contractor to immediately invoice for the full price of the line item. If a firm-fixed price line item is created for section 3610 reimbursement, the contracting officer shall insert in paragraph (b) of Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.232-7006, Wide Area WorkFlow Payment Instructions, "Invoice 2in1" (Services Only) as the applicable invoice and receiving report for the contractor to use when invoicing for its section 3610 reimbursement costs.

If a cost type line item (to include time and material and labor hour line items) is created for section 3610 reimbursement, the contractor will use a cost voucher when invoicing for section 3610 reimbursement costs, in accordance with DFARS clause 252.232-7006.

G. Duplicate Reimbursements Related to COVID-19

The contractor is required to notify the contracting officer within 30 days of receiving any credits or loan forgiveness for the same paid leave costs reimbursed under section 3610.

Should the timing of any applicable credits or loan forgiveness be such that the contractor is unable to provide notification to the contracting officer prior to execution of a contract modification resulting from the contractor's section 3610 reimbursement request, the contractor must notify the contracting officer in writing within 30 days of receipt of the credit or loan forgiveness and agree to execute a modification reducing the reimbursed amount under section 3610 by the amount received by the other means, up to the entire section 3610 reimbursement amount.

H. Additional Information

Amplifying information is available at <https://www.acq.osd.mil/dpap/pacc/cc/COVID-19.html>.

This class deviation remains in effect until rescinded. My point of contact is Greg Snyder, who is available by telephone at 703-614-0719 or by email at gregory.d.snyder.civ@mail.mil.

Kim Herrington
Acting Principal Director,
Defense Pricing and Contracting

Attachments:
As stated

Abbreviated Reimbursement Checklist**Applicability:**

This abbreviated reimbursement checklist applies to contractor requests and/or requests on behalf of its subcontractor(s) for reimbursement for paid leave provided to employees, pursuant to section 3610 of the CARES Act, for direct charged employees on a single contract, in which the amount of the requested reimbursement is below \$2,000,000 in total. This checklist may also be used in conjunction with either the multipurpose or global reimbursement checklists for subcontractor reimbursement requests that meet the criteria of this checklist. This checklist also provides guidance for reimbursements and may be tailored at contracting officer's discretion to fit specific circumstances.

A contractor that is not submitting a section 3610 reimbursement request on its own account may request a section 3610 reimbursement on behalf of its subcontractor(s), if the subcontractor(s) is/are established to be an affected contractor, by the contracting officer. If a subcontractor submits a section 3610 reimbursement request through the prime contractor, the subcontractor's submission should include the information below.

Any section 3610 reimbursement is subject to the availability of funds. In addition, the contracting officer shall also establish, in writing, that the contractor is an affected contractor prior to authorizing the reimbursement of paid leave costs under the authority of section 3610.

Contractors using the guidance in this abbreviated checklist to request section 3610 reimbursement for direct charge employees on a single contract cannot subsequently use the multi-purpose checklist to request reimbursement for indirect employees if the reimbursement would be allocable to that same contract.

A contractor's initial section 3610 reimbursement request should cover the period from the latter of the date that the contractor began providing paid leave reimbursable under section 3610 or March 27, 2020, through the close of the latest accounting cycle prior to the contractor's section 3610 reimbursement request. The initial section 3610 reimbursement request and any subsequent section 3610 reimbursement request should be coordinated with the contracting officer prior to submission, and submitted in a similar manner to the initial section 3610 reimbursement request using the same methodology.

Section A, "Notice of Intent to Request Reimbursement under Section 3610: Early Engagement," of this class deviation memorandum outlines early engagement discussions between the contractor and the contracting officer to coordinate a request for reimbursement.

1. Contractor Identification and Contract Information.

The contracting officer should require section 3610 reimbursement requests to include the following information:

(a) Contract/Task Order/Delivery Order Number(s).

(b) Contractor Name.

(c) Contractor Address.

(d) Contractor Commercial and Government Entity (CAGE) Code, Taxpayer Identification Number (TIN), and Unique Entity Identifier.

(e) Time Period Addressed by the Section 3610 Reimbursement Request.

2. Section 3610 Circumstances Narrative and Information on Affected Contractor Status.

(a) The contracting officer should require the contractor to provide a request to be established as an affected contractor with a narrative supporting its request. The contractor should identify the circumstances that impacted it as a result of the public health emergency declared for COVID-19, and why it decided to provide paid leave to its employees and/or subcontractors to keep them in a ready state for which it is requesting section 3610 reimbursement. The circumstances addressed in this narrative should be specific to the single contract/task order/delivery order for which the contractor is requesting section 3610 reimbursement. The narrative should include—

(1) An explanation as to why it was necessary to provide paid leave to its employees and/or subcontractor(s) to maintain a ready state under this contract/task order/delivery order;

(2) That the paid leave does not include paid leave for which an employee was otherwise paid (e.g., leave that is provided through company policy, employment contract, or labor agreement);

(3) That the paid leave was provided to, and taken by, the employee(s) and/or subcontractor(s) no earlier than March 27, 2020, and no later than September 30, 2020;

(4) Identification of facility closures or restrictions that precluded employees and/or subcontractor(s) from performing at their normal work location(s), including closure/restriction date range(s) and specifics;

(5) An explanation of why job duties could not be performed remotely for labor categories provided paid leave for which the contractor is seeking reimbursement under section 3610; and

(6) That the section 3610 reimbursement request does not result in a total of paid work and paid leave charges that exceed an average of 40 hours per week per employee.

(b) If requested, contractors should provide the contracting officer with a copy of any contractor telework policies and procedures.

3. Contractor Submission of Section 3610 Reimbursement Requests.

(a) The contracting officer should require the contractor to provide the following information to the contracting officer, as appropriate for the circumstances, with sufficient detail to support any audit of costs incurred, for this contract/task order/delivery order. The Government may also audit the billed costs in order to ensure accuracy and compliance with the law. Include the following—

(1) How section 3610 paid leave costs are segregated within the contractor's accounting system and reported;

(2) A description of the contractor's—

(i) Methodology to develop the amount requested for section 3610 reimbursement, as well as how the contractor has ensured that requested costs are not part of any other reimbursement request, either as a prime contractor or subcontractor;

(ii) Methodology to develop the appropriate rates included in the section 3610 reimbursement request and what is included in the appropriate rates (appropriate rates can include labor rates, overhead, and G&A, but may not include profit or fees);

(iii) Normal accounting treatment of leave costs (policies and procedures, indirect pools/allocation bases, disclosure statements, etc.);

(3) Any contractor company-specific guidance on the reimbursement of paid leave under section 3610; and

(4) Identification of the contractor's non-Government commercial work over the period covered by the section 3610 reimbursement request, and a description of the allocation method the contractor used to allocate section 3610 paid leave costs between the Government and commercial customers and the resulting cost allocation.

(b) The contracting officer should require the contractor to identify the eligible hours for which it is requesting reimbursement under section 3610 (i.e., those hours meeting the criteria identified in DFARS 231.205-79(a)(1)(ii) under Class Deviation 2020-O0013) for this contract/task order/delivery order.

(1) Reimbursement for paid leave may not be requested in excess of an average of 40 hours/week/employee for full-time employees.

(2) Reimbursement for paid leave provided to part-time employees is limited to the average hours the part-time employees typically worked per week (prior to the public health emergency declared on January 31, 2020, for COVID-19).

(c) The contracting officer should require the contractor to identify all employees for whom the contractor is requesting reimbursement for section 3610 paid leave, as well as the number of paid leave hours for which reimbursement is requested, as follows:

(1) Upon request of the contracting officer, by labor category (including skill level) and by pay period.

(2) By average hours worked, by employee, by contract/task order/delivery order, for the three months prior to the public health emergency declared on January 31, 2020, for COVID-19.

(3) For employees for whom the contractor is requesting section 3610 reimbursement, any hours actually worked during the period for which section 3610 reimbursement is sought and the hourly rate the contractor charged the contract/task order/delivery order for the employee hours worked.

(d) Contractors are not entitled to section 3610 reimbursement for paid leave hours or other paid absence taken by employees during the claimed period that the employee was entitled to receive absent the public health emergency declared on January 31, 2020, for COVID-19 (e.g., leave that the employee has earned or is provided through company policy, employment contract, or labor agreement, including other extended medical leave). These hours must be excluded from any section 3610 reimbursement requests.

(e) *Actual Paid Labor Rates.*

(1) The contracting officer should require the contractor to provide the actual, unburdened hourly rates being paid to all personnel for whom the contractor is requesting section 3610 reimbursement. Reimbursement shall be made at the appropriate rates for the work performed under the contract.

(2) Upon request of the contracting officer, contractors should provide payroll records to support the labor rates included in the section 3610 reimbursement request.

(f) *Financial Records.* Upon the contracting officer's request, the contractor should provide the financial records it used in developing the section 3610 reimbursement request.

4. Subcontractor Reimbursement Requests.

(a) *Supporting Information.* For all subcontractor section 3610 reimbursement requests, the prime contractor should be directed to provide, for each subcontractor, the same supporting information/documentation that is required from the prime contractor. If the subcontractor does not routinely provide such information to the prime contractor (e.g., due to competition or

proprietary data concerns), the subcontractor should provide the amount of its section 3610 reimbursement request to the prime contractor, for inclusion in the prime contractor's section 3610 reimbursement request, and submit all other supporting information directly to the contracting officer under separate cover.

(b) *Affected Contractor.* The contracting officer should require the contractor to evaluate each subcontractor's section 3610 reimbursement request submission and provide, with its own section 3610 reimbursement request, an opinion as to whether the subcontractor is an affected contractor and, if so, its analysis of whether the subcontractor's paid leave costs are allowable under section 3610. The prime contractor shall not commingle subcontractor information with its own.

(c) *Representations.* Subcontractor section 3610 reimbursement requests included in a prime contractor's section 3610 reimbursement request shall provide all of the representations in section 7, below.

5. Reimbursement Request Submission Format.

The contracting officer should require the contractor to submit the section 3610 reimbursement request in a format acceptable to the contracting officer, including the calculations of the requested section 3610 reimbursement amount, traceable to the supporting data submitted in accordance with the above. Any data, documentation, and information provided to support the contractor's section 3610 reimbursement request should be provided in electronic format, whenever possible.

6. Identification of Other Credits that will Reduce Relief Provided under Section 3610.

(a) Contractors are eligible for other sources of funds that may result in credits or loan forgiveness. The maximum reimbursement a contractor is authorized to receive under section 3610 shall be reduced by the amount of loan forgiveness a contractor receives pursuant to division G of the Families First Coronavirus Response Act (Pub. L. 116–127) or under the CARES Act (Pub. L. 116-136), or any other credit allowed by law that is specifically identifiable with the public health emergency declared on January 31, 2020, for COVID–19.

(b) The contracting officer should require contractors to reduce any section 3610 reimbursement amount requested and any section 3610 reimbursement received upon receipt of credits or loan forgiveness, outlined above. If the contractor receives any applicable credit or loan forgiveness subsequent to its submission of a section 3610 reimbursement request, the contractor must notify the contracting officer within 30 days of receipt of the credit or loan forgiveness and must agree to a modification reducing the amount of section 3610 reimbursement by the amount of the credit or loan forgiveness received.

7. Representations.

(a) The contracting officer shall require contractors to provide the following representations with section 3610 reimbursement requests—

(1) All paid leave included in the request for reimbursement was specifically paid to keep the employees and/or subcontractors in a ready state;

(2) The contractor segregated and reported the actual costs of the section 3610 paid leave payments, traceable to the individual employee charges;

(3) The section 3610 reimbursement request excludes any paid leave costs associated with the contractor's work as a subcontractor to another contractor;

(4) All impacted subcontractors have been afforded an opportunity to submit a request for reimbursement of section 3610 paid leave costs, and eligible subcontractor section 3610 reimbursement requests received and as appropriate are incorporated into the contractor's section 3610 reimbursement request for the contractor to pay to the subcontractor;

(5) The section 3610 reimbursement request has been reduced by any applicable credit or loan forgiveness the contractor has received that is/are specifically identifiable to the public health emergency declared on January 31, 2020, for COVID-19;

(6) The costs included in the section 3610 reimbursement request have not been requested elsewhere in another section 3610 reimbursement request; and

(7) The section 3610 reimbursement request is made in good faith, and the supporting data is accurate and complete to the best of the contractor's knowledge.

(b) The representations should be dated and include the signature and title of a designated individual within the company with the authority to sign and commit on behalf of the contractor. The contractor should explain any exceptions to these representations within its section 3610 reimbursement request.

Multipurpose Reimbursement Checklist

Applicability:

This multipurpose reimbursement checklist applies to contractor requests for reimbursement, pursuant to section 3610 of the CARES Act, for a single contract or multiple contracts for which the contractor is not using the global settlement checklist and cannot utilize the abbreviated checklist. If a contractor submits section 3610 reimbursement requests for multiple contracts using this checklist, the submission should be for a homogeneous group of contracts, such as contracts for a single program or with a single contracting activity or DoD Component. This checklist provides guidance to the contracting officer for reimbursements meeting these criteria and may be tailored at contracting officer's discretion to fit specific circumstances.

A contractor that is not submitting a 3610 reimbursement request, on its own account, may request section 3610 reimbursement on behalf of its subcontractor(s), if the subcontractor(s) is/are determined, by the contracting officer, to be an affected contractor(s). If a subcontractor submits a section 3610 reimbursement request through the prime contractor, the subcontractor's submission should include the information below.

Any section 3610 reimbursement is subject to the availability of funds. In addition, the contracting officer shall also establish, in writing, that the contractor is an affected contractor prior to authorizing the reimbursement of paid leave costs under the authority of section 3610.

Section 3610 reimbursement requests that utilize the guidance in this checklist should be provided to a contracting officer in the applicable contracting activity or DoD Component (Military Department, Defense Agency, Defense Field Activity). At their discretion, when multiple contracts are involved, contracting activities or DoD Components may appoint a lead contracting officer to ensure consistency and efficiency in considering the section 3610 reimbursement request.

A contractor's initial section 3610 reimbursement request should cover the period from the latter of the date that the contractor began providing paid leave reimbursable under section 3610 or March 27, 2020, through the close of the latest accounting cycle prior to the contractor's section 3610 reimbursement request. The initial section 3610 reimbursement request and any subsequent section 3610 reimbursement request should be coordinated with the contracting officer prior to submission, and submitted in a similar manner to the initial section 3610 reimbursement request using the same methodology.

Section A, "Notice of Intent to Request Reimbursement under Section 3610: Early Engagement," of this class deviation memorandum outlines early engagement discussions between the contractor and the contracting officer to coordinate a request for reimbursement.

1. Contractor Identification.

The contracting officer should require contractor section 3610 reimbursement requests for a single contract or multiple contracts, to include the following information:

(a) Contractor Name.

(b) Contractor Address.

(c) Contractor Commercial And Government Entity (CAGE) code, Taxpayer Identification Number (TIN), and Unique Entity Identifier.

2. Contractor Organization.

The contracting officer should require section 3610 reimbursement requests to include:

(a) Whether the contractor is a parent, subsidiary, division, segment, or otherwise affiliated with another company.

(b) If requests for affiliated companies are being submitted separately, how the contractor is ensuring that duplicate payments for the same costs are not being requested.

(c) Whether the contractor is submitting section 3610 reimbursement requests to other contracting officers or Federal agencies. If so, the contracting officer should require a list of all section 3610 reimbursement requests being submitted.

3. Contracts/Task Orders/Delivery Orders.

The contracting officer should require the contractor should to provide a list of all contracts/task orders/delivery orders under which the contractor is requesting section 3610 reimbursement from DoD and other Federal Agencies, to provide the following:

(a) Each section 3610 reimbursement request should include the timeframe for which each contract is impacted, by contract/task order/delivery order, for which the contractor is requesting section 3610 reimbursement.

(b) Contract type(s) for each contract/task order/delivery order for which the contractor is requesting section 3610 reimbursement.

(c) The list should be sortable and also include the DoD Component, buying activity, contracting officer, CAGE code, TIN, and Unique Entity Identifier.

(d) Identification of the contractor's non-Government commercial work over the period covered by the section 3610 reimbursement request, and a description of the allocation method the contractor used to allocate section 3610 paid leave costs between the Government and commercial customers and the resulting cost allocation.

4. Section 3610 Circumstances Narrative and Information on Affected Contractor Status.

(a) The contracting officer should require the contractor to provide a request to be established as an affected contractor with a narrative supporting its request. The contractor should identify the circumstances that impacted it as a result of the public health emergency declared for COVID-19, and why it decided to provide paid leave to its employees and/or subcontractor(s) to keep them in a ready state for which it is requesting section 3610 reimbursement. The circumstances addressed in this narrative should be specific to the single contract/task order/delivery order or multiple contracts for which the contractor is requesting section 3610 reimbursement. The narrative should include—

(1) An explanation as to why it was necessary to provide paid leave to its employees and/or subcontractor(s) to maintain a ready state under each contract/task order/delivery order;

(2) That the paid leave does not include paid leave for which an employee was otherwise paid (e.g., leave that is provided through company policy, employment contract, or labor agreement);

(3) That the paid leave was provided to, and taken by, the employee(s) and/or subcontractor(s) no earlier than March 27, 2020, and no later than September 30, 2020;

(4) Identification of facility closures or restrictions that precluded employees and/or subcontractor(s) from performing at their normal work location(s), including closure/restriction date range(s) and specifics;

(5) An explanation of why job duties could not be performed remotely for labor categories provided paid leave for which the contractor is seeking reimbursement under section 3610; and

(6) That the section 3610 reimbursement request does not result in a total of paid work and paid leave charges that exceed an average of 40 hours per week per employee.

(b) If requested, contractors should provide the contracting officer with a copy of any contractor telework policies and procedures.

5. Contractor Submission of Section 3610 Reimbursement Requests.

(a) The contracting officer should require the contractor to provide the following information to the contracting officer, as appropriate for the circumstances, with sufficient detail to support any audit of costs incurred, for this contract/task order/delivery order. The Government may also audit the billed costs in order to ensure accuracy and compliance with the law. Include the following—

(1) How section 3610 paid leave costs are segregated within the contractor's accounting system and reported.

(2) A description of the contractor's—

(i) Methodology to develop the amount requested for section 3610 reimbursement. This methodology must be consistent across all contracts/task orders/delivery orders and section 3610 reimbursement requests. The contracting officer should require the contractor to ensure that requested section 3610 costs are not part of any other reimbursement request, either as a prime or subcontractor;

(ii) Methodology to develop the appropriate rates included in the section 3610 reimbursement request and what is included in the appropriate rates. Appropriate rates can include labor rates and appropriate indirect rates such as overhead and G&A, but may not include profit or fees; and

(iii) Normal accounting treatment of leave costs (e.g., policies and procedures, indirect pools/allocation bases, disclosure statements).

(3) The current status of the contractor's accounting system for Government contracting purposes, whether: Approved; Adequate; Not Evaluated; Not Applicable; or Disapproved. If the accounting system is disapproved, the contractor should also list the identified deficiencies of the accounting system, and if applicable, the date of the last accounting system approval and any changes since that approval.

(4) Any contractor company-specific guidance on the reimbursement of paid leave under section 3610.

(b) The contracting officer may require the contractor to provide the financial records used in developing its section 3610 reimbursement request.

(c) To keep an employee in a ready state, all paid leave costs in the section 3610 reimbursement request must have been incurred by the contractor or subcontractor and paid by the employer to the employee during the period of the section 3610 reimbursement request.

(1) The contracting officer should require the contractor to identify the eligible hours for which it is requesting reimbursement under section 3610 (i.e., those hours meeting the criteria identified in this class deviation) for each contract/task order/delivery order, broken out by labor category/skill level and by pay period.

(i) Reimbursement for paid leave may not be requested in excess of an average of 40 hours/week/employee for full-time employees.

(ii) Reimbursement for paid leave provided to part-time employees is limited to the average hours the part-time employees typically worked per week (prior to the public health emergency declared on January 31, 2020, for COVID-19).

(2) When requesting reimbursement for employees who are typically charged indirectly, the contractor should provide a detailed explanation of how:

(i) Each individual indirect employee meets the criteria addressed in this class deviation; and

(ii) Obtaining reimbursement for these indirect employees' paid leave under section 3610 will not result in a duplication of costs.

(3) The contractor should identify all employees for whom the contractor is requesting section 3610 reimbursement as well as the number of paid leave hours for which reimbursement is requested, as follows:

(i) By labor category and skill level, upon request;

(ii) By average hours worked, by employee, by contract/task order/delivery order, for the three months prior to the public health emergency declared on January 31, 2020, for COVID-19; indicating whether each employee is charged direct assigned to a single contract/task order/delivery order, direct supporting multiple contracts, or indirect;

(iii) For employees for whom the contractor is requesting section 3610 reimbursement, any hours actually worked during the period for which section 3610 reimbursement is sought and the rate the contractor charged for each employee's hours worked;

(d) Contractors are not entitled to section 3610 reimbursement for paid leave hours or other paid absence taken by employees during the claimed period that the employee was entitled to receive absent the public health emergency declared on January 31, 2020, for COVID-19 (e.g., leave that the employee has earned or is provided through company policy, employment contract, or labor agreement, including other extended medical leave). These hours must be excluded from any section 3610 reimbursement requests. Contractors also may not be reimbursed for paid leave costs for salaried employees to the extent that the salaried employee is paid whether working or not.

(e) The contracting officer should require the contractor to identify the average sick leave hours budgeted for and included in any forward pricing for the period claimed in the section 3610 reimbursement request. This will assist the Department in determining how much sick leave is already included in indirect rates and whether there is any potential duplication of hours in the section 3610 reimbursement request.

(f) *Actual Paid Labor Rates.*

(1) The contracting officer should require the contractor to provide the actual, unburdened hourly rates being paid to all personnel for whom the contractor is requesting section 3610 reimbursement. Reimbursement shall be made at the appropriate rates for the work performed under the contract.

(2) Upon request of the contracting officer, contractors should provide payroll records to support the labor rates included in the section 3610 reimbursement request.

(g) *Applicable Billing Rates.* The contractor shall identify the Forward Pricing Rate Proposal (FPRP), Forward Pricing Rate Agreement (FPRA), Defense Contract Management Agency Forward Pricing Rate Recommendation (FPRR), or appropriate billing rates, as applicable, in place covering the period of time in the section 3610 reimbursement request.

(1) The contractor should explain and document how it developed the applicable indirect rate(s) prior to the public health emergency declared on January 31, 2020, for COVID-19; and

(2) The contractor should show the calculations it used to remove the indirect employees' paid leave charges included in its section 3610 reimbursement request from its indirect rate calculation; the contractor should provide the revised indirect rate(s).

(h) *Certified Cost or Pricing Data.* In accordance with FAR 15.403-4(a)(1)(iii), when the value of a price adjustment associated with an individual contract or subcontract included in a contractor's overarching section 3610 reimbursement request exceeds the threshold for obtaining certified cost or pricing data at FAR 15.403-4(a)(1), when applicable, certified cost or pricing data shall be obtained for only those individual contracts or subcontracts in accordance with FAR 15.403-4.

6. Subcontractor Reimbursement Requests.

(a) *Supporting Information.* For all subcontractor section 3610 reimbursement requests, the contracting officer should require the contractor to provide, for each subcontractor, the same supporting information/documentation that is required from the prime contractor. However, if they meet the criteria, subcontractors may use the abbreviated checklist instead. If the subcontractor does not routinely provide such information to the prime contractor (e.g., due to competition or proprietary data concerns), the subcontractor should provide the amount of its section 3610 reimbursement request to the prime contractor, for inclusion in the prime contractor's section 3610 reimbursement request, and submit all other supporting information directly to the contracting officer under separate cover.

(b) *Affected Contractor.* The contracting officer should require the prime contractor to evaluate each subcontractor's section 3610 reimbursement request submission and provide, with its own section 3610 reimbursement request, an opinion as to whether the subcontractor is an affected contractor and, if so, its analysis of whether the subcontractor's paid leave costs are allowable under section 3610. The prime contractor must not commingle subcontractor information with its own.

(c) *Representations.* Subcontractor section 3610 reimbursement requests included in a prime contractor's section 3610 reimbursement request shall provide all of the representations in section 9, below.

7. Reimbursement Request Submission Format.

The contracting officer should require the contractor to submit the section 3610 reimbursement request in a format acceptable to the contracting officer, including the calculations of the requested section 3610 reimbursement amount, traceable to the supporting data submitted in accordance with the above. Any data, documentation, and information provided to support the contractor's section 3610 reimbursement request should be provided in electronic format, whenever possible.

8. Identification of Other Credits that will Reduce Relief Provided under Section 3610.

(a) Contractors are eligible for other sources of funds that may result in credits or loan forgiveness. The maximum reimbursement a contractor is authorized to receive under section 3610 shall be reduced by the amount of loan forgiveness a contractor receives pursuant to division G of the Families First Coronavirus Response Act (Pub. L. 116–127) or under the CARES Act (Pub. L. 116-136), or any other credit allowed by law that is specifically identifiable with the public health emergency declared on January 31, 2020 for COVID–19.

(b) The contracting officer should require contractors to reduce any section 3610 reimbursement amount requested and any section 3610 reimbursement received upon receipt of credits or loan forgiveness, outlined above. If the contractor receives any applicable credit or loan forgiveness subsequent to its submission of a section 3610 reimbursement request, the contractor must notify the contracting officer within 30 days of receipt of the credit or loan forgiveness and must agree to a modification reducing the amount of section 3610 reimbursement by the amount of the credit or loan forgiveness received.

9. Representations.

(a) The contracting officer shall require contractors to provide the following representations with section 3610 reimbursement requests—

(1) All paid leave included in the request for reimbursement was specifically paid to keep the employees and/or subcontractors in a ready state;

(2) The contractor segregated and reported the actual costs of the section 3610 paid leave payments, traceable to the individual employee charges;

(3) The section 3610 reimbursement request excludes any paid leave costs associated with the contractor's work as a subcontractor to another contractor;

(4) All impacted subcontractors have been afforded an opportunity to submit a request for reimbursement of section 3610 paid leave costs, and eligible subcontractor section 3610 reimbursement requests received and as appropriate are incorporated into the contractor's section 3610 reimbursement request for the contractor to pay to the subcontractor;

(5) The section 3610 reimbursement request has been reduced by any applicable credit or loan forgiveness the contractor has received that is/are specifically identifiable to the public health emergency declared on January 31, 2020, for COVID-19;

(6) The costs included in the section 3610 reimbursement request have not been requested elsewhere in another section 3610 reimbursement request; and

(7) The section 3610 reimbursement request is made in good faith, and the supporting data is accurate and complete to the best of the contractor's knowledge.

(b) The representations should be dated and include the signature and title of a designated individual within the company with the authority to sign and commit on behalf of the contractor. The contractor should explain any exceptions to these representations within its section 3610 reimbursement request.

Global Reimbursement Checklist

Applicability:

This global checklist applies to contractor requests for reimbursement, pursuant to section 3610 of the CARES Act, that seek a global reimbursement at a business unit (or segment) level when the Defense Contract Management Agency (DCMA) is acting as the Cognizant Federal Agency Official (CFAO) on behalf of the Department (unless another DoD organization retains the CFAO responsibilities for the contractor business unit (or segment)). For the purposes of this checklist, the term CFAO is recognized as the Administrative Contracting Officer (ACO) or component contracting officer responsible for the duties identified in FAR 42.302(a)(5), (a)(9), (a)(11), and (a)(12) at a contractor business unit (or segment) level. A business unit (or segment) is understood to mean the organizational level in a company where settlement can be reached by a Corporate or Divisional ACO (for the largest contractors) or an ACO or component contracting officer (for other contractors).

Early engagement efforts will minimize the data necessary to establish a rough order of magnitude (ROM) cost impact due to section 3610 paid leave costs and provide the contracting officer with the information needed to pursue funding. The CFAO will advise the contractor if funding may be available.

If funds are potentially available, the contractor may submit a request to be established as an affected contractor and for reimbursement under section 3610 in accordance with this guidance. Section 3610 reimbursement requests are limited to incurred costs only and should not include projected estimates. Section 3610 reimbursement to a contractor will be limited to the paid leave costs incurred by the contractor and allocable to its DoD contracts, including applicable subcontractor costs under its contracts. Section 3610 reimbursement shall not include paid leave costs incurred by the contractor allocable to any subcontracts. Any section 3610 reimbursement requests for paid leave costs incurred while performing as a subcontractor should be submitted to the appropriate prime contractor.

The initial section 3610 reimbursement request and any subsequent section 3610 reimbursement requests should be coordinated with the CFAO prior to submission, and submitted in a similar manner to the initial section 3610 reimbursement request.

1. Notice of Intent to Request Reimbursement under Section 3610: Early Engagement.

(a) A contractor may provide a ROM of its paid leave costs that will be included in its section 3610 reimbursement request (covered paid leave costs) to the CFAO. The intent of the ROM is to allow the CFAO to check if funds are available.

(b) The data in the ROM should include, but is not limited to—

(1) Total covered paid leave costs incurred to date for the contractor's employees of a business unit (or segment) only (excluding its subcontractor's covered paid leave costs);

(2) ROM of covered paid leave costs for its subcontractors;

(3) ROM breakdown of the contractor's total business base between DoD contracts, other Government contracts, subcontracts performed by contractor under DoD and other Government contracts, and all other commercial business (expressed by percentage);

(4) ROM breakdown of contract type (cost reimbursable and firm-fixed-price) for—

(i) The contractor's DoD contracts;

(ii) Other Government contracts; and

(iii) Subcontracts performed by the contractor under other contractor's DoD and other Government contracts (expressed by percentage of contract values or allocation base or other appropriate measure);

(5) ROM breakdown of the contractor's DoD component (Military Department, Defense Agency, Defense Field Activity), and other Government contracts (expressed by percentage of contract values or allocation base or other appropriate measure); and

(6) As discussed during early engagement, any other high-level data the CFAO would need to assess the ROM for funding purposes.

(c) The CFAO will notify the contractor of the funds availability status. Once the CFAO determines that funds may be available, the process will move forward to establish the contractor's affected contractor status and for the contractor to submit its section 3610 reimbursement request(s).

2. Contractor Identification and Contracts/Task Orders/Delivery Orders.

The CFAO should require the contractor to provide a narrative supporting its assertion that it is an affected contractor, and require contractor section 3610 requests for global reimbursement to provide a list of all contracts/task orders/delivery orders impacted during the period for which the contractor seeks affected contractor status. CFAOs should require inclusion of the following information for the listed items:

- (a) Contract/Task Order/Delivery Order Number(s).
- (b) Commercial and Government Entity (CAGE) code(s).
- (c) Contract Type(s).
- (d) Awarding DoD Component(s).
- (e) Primary Agency Point(s) of Contact (i.e., Contracting Officer(s)).
- (f) Time Period Covered by the Section 3610 Reimbursement Request.

3. Section 3610 Circumstances Narrative and Information on Affected Contractor Status.

The contractor should provide a request to be established as an affected contractor, with a narrative supporting its request. The contractor should identify the circumstances that impacted it as a result of the public health emergency declared for COVID-19, and why it decided to provide paid leave to its employees and/or subcontractors to keep them in a ready state for which it is requesting section 3610 reimbursement. The narrative should include—

(a) An explanation as to why it was necessary to provide paid leave to its employees and/or subcontractor(s) to maintain a ready state;

(b) That the covered paid leave costs do not include leave for which an employee was otherwise paid (e.g., leave that is provided through company policy, employment contract, or labor agreement);

(c) That covered paid leave was provided to, and taken by, the employees and/or subcontractor(s) no earlier than March 27, 2020, and no later than September 30, 2020;

(d) Identification of facility closures or restrictions that precluded employees and/or subcontractors from performing at their normal work location(s), including closure/restriction date range(s) and specifics;

(e) An explanation of why job duties could not be performed remotely for labor categories provided paid leave for which the contractor is seeking reimbursement under section 3610;

(f) That the section 3610 reimbursement request does not result in a total of paid work and paid leave charges that exceed an average of 40 hours per week per employee; and

(g) That the company business unit (or segment) has not requested to be established as an affected contractor by any other DoD contracting officer.

4. Contractor Submission of Global Section 3610 Reimbursement Requests.

(a) The CFAO should require the contractor to provide information to support any audit of costs incurred, for each contract/task order/delivery order when requesting section 3610 reimbursement. The Government may audit the billed costs in order to ensure accuracy and compliance with the law. The CFAO should require the contractor to ensure that requested costs are not part of any other submission, either as a prime contractor or subcontractor.

(b) The section 3610 reimbursement request should include the following information at a contract/task order/delivery order level (*the CFAO may request detailed supporting documentation be tailored to adequately address specific circumstances*)—

(1) The total amount of paid leave costs requested by the contractor for section 3610 reimbursement by DoD;

(2) The cost accounting practice(s) used by the business unit (or segment) to allocate section 3610 costs to cost objectives (whether existing, disclosed practices, or new ones);

(3) A sufficiently detailed breakdown of the section 3610 costs incurred by the business unit (or segment) supporting the amount allocable to each affected contract/task order/delivery order;

(4) The identification of any impacts to direct labor rates;

(5) For section 3610 costs classified as direct, the amount charged to each contract/task order/delivery order, including the following:

(i) Identification of eligible hours (i.e., those hours meeting the criteria identified in DFARS 231.205-79(a)(1)(ii) under Class Deviation 2020-O0013) for each affected contract/task order/delivery order;

(ii) When requested by the CFAO, sample data to support the hours by employee to determine labor category, actual hours actually worked, etc.; and

(iii) Why direct labor job duties could not be performed remotely for labor categories subject to section 3610 paid leave.

(6) Inclusion of subcontractor(s) section 3610 reimbursement requests (see section (c), below, for more details of necessary supporting information);

(7) For section 3610 costs classified as indirect—

(i) A calculation of the relevant pool(s), allocation base(s), and rate(s) used to allocate the cost to cost objective(s);

(ii) Identification/description of DoD, other Government, and commercial participation in the allocation base(s);

(iii) The allocation of the section 3610 costs to each contract/task order/delivery order (in a format similar to an incurred cost proposal schedule or cumulative allowable cost worksheet); and

(iv) Why indirect labor job duties could not be performed remotely for labor categories subject to section 3610 paid leave; and

(8) Company-specific guidance on section 3610 or COVID-19 related paid leave.

(c) *Subcontractor Reimbursement Requests.*

(1) *Supporting Information.* For all subcontractor section 3610 reimbursement requests, the CFAO should require the prime contractor to provide, for each subcontractor, the same supporting information/documentation as outlined above in paragraph 4(b). However, if they meet the criteria, subcontractors may use the abbreviated checklist. If the subcontractor does not routinely provide such information to the prime contractor (e.g., due to competition or proprietary data concerns), the subcontractor should provide the amount of its section 3610 reimbursement request to the prime contractor, for inclusion in the prime contractor's section 3610 reimbursement request, and submit all other supporting information directly to the CFAO under separate cover.

(2) *List of Impacted Subcontractors.* The CFAO should require the prime contractor's section 3610 reimbursement request to include a listing of all subcontractor(s) requesting section 3610 reimbursement. The list should include the following information for the listed items:

- (i) Subcontract Number(s).
- (ii) CAGE Code(s).
- (iii) Subcontract Type(s).
- (iv) Associated Prime Contract Number(s).
- (v) Time Period Covered by the Subcontractor Section 3610 Reimbursement Request.
- (vi) Contractor Proposed Amount for Subcontractor Section 3610 Reimbursement.

(3) *Affected Contractor.* The CFAO should require the prime contractor to evaluate each subcontractor's section 3610 reimbursement request submission and provide, with its own section 3610 reimbursement request, an opinion to the CFAO as to whether the subcontractor is an affected contractor and, if so, its analysis of whether the subcontractor's paid leave costs are allowable under section 3610. The prime contractor must not commingle subcontractor information with its own.

(4) *Representations*. The CFAO shall require that subcontractor section 3610 reimbursement requests included in a prime contractor's section 3610 reimbursement request provide all of the representations in section 8, below.

5. Certified Cost or Pricing Data.

In accordance with FAR 15.403-4(a)(1)(iii), when the value of a price adjustment associated with an individual contract or subcontract included in a contractor's overarching section 3610 reimbursement request exceeds the threshold for obtaining certified cost or pricing data at FAR 15.403-4(a)(1), when applicable, certified cost or pricing data shall be obtained for only those individual contracts or subcontracts in accordance with FAR 15.403-4.

6. Reimbursement Request Submission Format.

The contractor should submit the section 3610 reimbursement request in a format acceptable to the CFAO, including the calculations of the requested section 3610 reimbursement amount, traceable to the supporting data submitted in accordance with the above. Any data, documentation, and information provided to support the contractor's section 3610 reimbursement request should be provided in electronic format, whenever possible.

7. Identification of Other Credits that May Reduce Relief Provided under Section 3610.

(a) Contractors are eligible for other sources of funds that may result in credits or loan forgiveness. The maximum reimbursement a contractor is authorized to receive under section 3610 shall be reduced by the amount of loan forgiveness a contractor receives pursuant to division G of the Families First Coronavirus Response Act (Pub. L. 116-127) or under the CARES Act (Pub. L. 116-136), or any other credit allowed by law that is specifically identifiable with the public health emergency declared on January 31, 2020, for COVID-19.

(b) The CFAO should require contractors to reduce any section 3610 reimbursement amount requested and any section 3610 reimbursement received upon receipt of credits or loan forgiveness, outlined above. If the contractor receives any applicable credit or loan forgiveness subsequent to its submission of a section 3610 reimbursement request, the contractor must notify the CFAO within 30 days of receipt of the credit or loan forgiveness and must agree to a modification reducing the amount of section 3610 reimbursement by the amount of the credit or loan forgiveness received.

8. Representations.

(a) The CFAO shall require contractors to provide the following representations with section 3610 reimbursement requests:

(1) All paid leave included in the request for reimbursement was specifically paid to keep the employees and/or subcontractors in a ready state;

(2) The contractor segregated and reported the actual costs of the section 3610 paid leave payments, traceable to the individual employee charges;

(3) The section 3610 reimbursement request excludes any paid leave costs associated with the contractor's work as a subcontractor to another contractor;

(4) All impacted subcontractors have been afforded an opportunity to submit a request for reimbursement of section 3610 paid leave costs, and eligible subcontractor section 3610 reimbursement requests received and as appropriate are incorporated into the contractor's section 3610 reimbursement request for the contractor to pay to the subcontractor;

(5) The section 3610 reimbursement request has been reduced by any applicable credit or loan forgiveness the contractor has received that is/are specifically identifiable to the public health emergency declared on January 31, 2020, for COVID-19;

(6) The costs included in the section 3610 reimbursement request have not been requested elsewhere in another section 3610 reimbursement request; and

(7) The section 3610 reimbursement request is made in good faith, and the supporting data is accurate and complete to the best of the contractor's knowledge.

(b) The representations should be dated and include the signature and title of a designated individual within the company with the authority to sign and commit on behalf of the contractor. The contractor should explain any exceptions to these representations within its section 3610 reimbursement request.

252.243-7999 Section 3610 Reimbursement. (DEVIATION 2020-O0021)

Use the following clause when modifying contracts, task orders, or delivery orders, including those using part 12 procedures for the acquisition of commercial items, to provide for the reimbursement of paid leave to an affected contractor pursuant to Class Deviation 2020-O0021.

SECTION 3610 REIMBURSEMENT (DEVIATION 2020-O0021) (AUG 2020)

(a) *Definitions.* As used in this clause—

“Affected contractor” means a contractor that has incurred costs to provide paid leave for its employees or subcontractors to maintain its workforce in a ready state and otherwise meets all the requirements of section 3610 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136).

(b) *Reduction for credits or loan forgiveness.*

(1) Section 3610 of the CARES Act requires that the maximum reimbursement to affected contractors authorized by section 3610 shall be reduced by the amount of any credits received pursuant to Division G of Public Law 116-127 and any applicable credits a contractor is allowed under the CARES Act. The Contracting Officer will reduce the amount of the funds authorized under section 3610 and provided by modification, commensurate with the amount of any credits or loan forgiveness received.

(2) Should the timing of any other reimbursements be such that the Contractor is unable to provide notification to the contracting officer prior to execution of a contract modification resulting from the Contractor’s section 3610 reimbursement request, the Contractor shall notify the contracting officer, as provided in paragraph (c), and agrees that the Government will modify the contract to reduce the reimbursed amount by the credit or loan forgiveness amount received.

(c) *Notice of receipt of credits or loan forgiveness.*

(1) The Contractor shall notify the Contracting Officer in writing within 30 days of receiving—

(i) Loan forgiveness pursuant to—

(A) Division G of the Families First Coronavirus Response Act (Pub. L. 116–127); or

(B) The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136); and

(ii) Any other credit allowed by law (including State and local laws that are specifically identifiable with the public health emergency declared on January 31, 2020, for COVID-19).

(2) Include in the notice to the Contracting Officer the amount of any credits or loan forgiveness received along with supporting information necessary to facilitate calculation of the required reductions of reimbursement provided under any contract modification pursuant to section 3610 reimbursement to offset credits or loan forgiveness received under paragraph (c)(1).

(d) *Audit.* The Government reserves the right to audit the Contractor's billed costs reimbursed under section 3610 of the CARES Act to ensure accuracy and compliance with law and any applicable regulations.

(e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e), in any subcontract modification that involves the reimbursement of paid leave under section 3610 of the CARES Act to affected subcontractors, including subcontracts for the acquisition of commercial items.

(End of clause)