

Guidance for using DOE's Clauses developed to implement Section 3610 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. No. 116-136)

A. Summary:

Contracting Officers must:

1. Work with Program Officials and the contractor to understand how the contractor is planning to use the relief provisions in the CARES Act and identifying any contractor and subcontractor employees to whom Section 3610 of the CARES Act may apply.
2. Using sound business judgment in considering the guidance below, determine if it is in the best interest of the Government to use DOE's clauses developed to implement section 3610.
3. Report contract modifications to implement section 3610 to the Federal Procurement Data System (FPDS) by: entering "COVID-19 3610" at the beginning of the Description of Requirements data field on the contract action report (CAR); and including in the CAR the National Interest Action Code established for identifying all COVID related procurement actions (COVID-19 2020).
4. Work with the contractor to secure necessary documentation, representations, or both to prevent duplication of payment and ensure the correct reimbursement, including applicable credits.

B. Guidance:

Contracting Officers must consider that Section 3610 of the CARES Act:

1. Is intended to preserve the resilience of the federal contracting base in the fight against the COVID-19 by helping the acquisition workforce ensure the health and safety of federal contractors and subcontractors in light of COVID-19 while maintaining continued contract performance in support of agency missions.
2. Acknowledges that, in order to maintain the resilience of the federal contracting base, reimbursing paid leave may play a legitimate role; and a multi-faceted strategy is required, which includes placing certain offsets on reimbursing paid leave (offsets may include where other forms of relief and stimulus are available), and placing certain prohibitions on the availability of paid leave.
3. Authorizes: (1) using any funds made available to the agency by Congress to reimburse contractors for the costs of workers' lost time up to September 30, 2020, if the contractor provides paid leave to its employees or subcontractors to maintain a ready state, including to protect the life and safety of Government and contractor personnel; (2) modifying

contracts unilaterally (without requiring consideration but precluding additional profit or fee) to reimburse the costs; (3) providing reimbursement on any contract type; and (4) reimbursing at contractor billing rates.

4. Ensures that the Federal Government's aggressive response to COVID-19 includes multiple mechanisms to support federal contractors and their employees. Contractors are responsible for ensuring federal funds are not being used to make multiple payments for the same purpose; Contracting Officers, however, must ensure appropriate contract administration and oversight.
5. Restricts the circumstances under which reimbursement may be made, and the amount of reimbursement allowed.
6. Applies only to contractor or subcontractor employees who: cannot perform work on a government-owned, government-leased, contractor-owned, or contractor-leased facility or site approved by the federal government for contract performance due to closures or other restrictions; and are unable to telework because their job duties cannot be performed remotely during the public health emergency declared on January 31, 2020 for Coronavirus (COVID-19).
7. Authorizes reimbursement only at the minimum applicable contract billing rates for up to an average of 40 hours per week for contractor or subcontractor payments made no earlier than January 31, 2020, and no later than September 30, 2020.
8. Requires the reduction of the maximum reimbursement authorized by the amount of credit a contractor is allowed pursuant to division G of Public Law 116-127 (Families First Coronavirus Response Act) and any applicable credits a contractor is allowed under the CARES Act.
9. Is an authorization, not a mandate, to reimburse costs claimed for paid leave.
10. Authorizes payment of paid leave costs so that agencies may use their discretion to make reimbursements that are in the best interest of the government and do not reject contractor requests for reimbursement because of legal uncertainty regarding whether these costs are allowable.
11. Leaves in place the contractor's and subcontractor's responsibility for: the well-being of their workforce; the burden to support any claimed allowable costs, including claimed paid leave costs for their employees, with appropriate documentation; and identifying available credits that may reduce reimbursement claimed.
12. Necessitates requiring contractor representations to prevent double-dipping by the contractor's making more than one request for reimbursement for the same costs and to ensure recognition of all available credits, including those allowed under the CARES Act.

- a. Prudence dictates Contracting Officers and Program Officials work with their contractors to understand how they are using or plan to use the relief provisions available to them under the CARES Act and the Families First Act to address the health and economic hardships created by COVID-19. Contractors are responsible for identifying all available sources of relief including any for which they have not applied.
- b. In some cases provisions of the CARES Act other than section 3610, such as sections 1102 and 1106, may provide a more efficient means of getting payment into the hands of contractor employees. Therefore, it is important to obtain representations from contractors regarding other relief claimed or received, including credits allowed, along with the financial and other documentation necessary to support their requests for reimbursement.
- c. It is also important to obtain representations from contractors regarding offset credits in accordance with the requirements of section 3610. If the amount of a credit cannot be determined at the time reimbursement is claimed by the contractor, the contractor is responsible for reporting that to the Contracting Officer.

C. Contract Clauses:

Contracting Officers may modify contracts to include the appropriate clause prescribed in Attachment 2 after considering the guidance above and making a determination that it is in the Government's best interest to do so.