

Cost-Reimbursement type contract, Fixed-price type contract, and Time-and-Materials type contract clauses to implement Section 3610 of the CARES Act

Contracting Officers may insert the following clause in Cost-Reimbursement type contracts.

Paid leave under Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to maintain employees and subcontractors in a ready state.

(a) The Contractor may submit for reimbursement and the Government (without requiring consideration but precluding additional fee) will treat as allowable (if otherwise allowable per federal regulations) the costs of paid leave (including sick leave) the Contractor or its subcontractors provide to keep employees in a ready state if--

(1) The employees: cannot perform work on a site approved by the Federal Government (including a federally-owned or leased facility or site) due to facilities closures or other restrictions; and cannot telework because their job duties cannot be performed remotely during the public health emergency declared on January 31, 2020 for COVID-19.

(2) The costs are incurred from January 31, 2020 through December 18, 2020.

(3) The costs do not reflect any amount exceeding an average of 40 hours per week for paid leave.

(b) Where other relief provided for by the CARES Act or any other Act would benefit the contractor or the contractor's subcontractors, including, but not limited to, funds available under sections 1102 and 1106 of the CARES Act, the contractor should evaluate the applicability of such benefits in seeking reimbursement under the contract.

(c) The Contractor must represent in any request for reimbursement--

(1) Either it: has not received, has not claimed, and will not claim any other reimbursement, including claims for reimbursement via letter of credit, for federal funds available under the CARES Act for the same purpose, including, but not limited to, funds available under sections 1102 and 1106 of the CARES Act; or if it has received, claimed, or will claim other reimbursement, that reimbursement has been reflected, or will be reflected when known, in requests for reimbursement but in no case reflected later than in its final proposal to determine allowable incurred costs.

(2) Its request reflects or will reflect as soon as known all applicable credits, including

(i) Tax credits, including credits allowed pursuant to division G of Public Law 116-127; and

(ii) Applicable credits allowed under the CARES Act, including applicable credits for loan guarantees.

(End of clause)

Contracting Officers may insert the following clause in Fixed-Price type contracts and Time-and-Materials type contracts.

Paid leave under Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to maintain employees and subcontractors in a ready state.

(a) In any request for equitable adjustment to the price (for a fixed-price type contract) or to the hourly rates and materials cost (for a time-and-materials type contract) of this contract, the Contractor may propose and the Government (without requiring consideration but precluding additional profit) will treat--for the purpose of beginning negotiations--as allowable (if otherwise allowable per federal regulations) the incurred or estimated costs of paid leave (including sick leave) the Contractor or its subcontractors provide to keep employees in a ready state if--

(1) The employees: cannot perform work on a site approved by the Federal Government (including a federally-owned or leased facility or site) due to facilities closures or other restrictions; and cannot telework because their job duties cannot be performed remotely during the public health emergency declared on January 31, 2020 for COVID-19.

(2) The costs were incurred or will be incurred from January 31, 2020 through December 18, 2020.

(3) The costs do not reflect any amount exceeding an average of 40 hours per week for paid leave.

(b) Where other relief provided for by the CARES Act or any other Act would benefit the contractor or the contractor's subcontractors, including, but not limited to, funds available under sections 1102 and 1106 of the CARES Act, the contractor should evaluate applicability of such benefits in seeking reimbursement under the contract.

(c) The Contractor must represent in any request for reimbursement--

(1) Either: it has not received, has not claimed, and will not claim any other reimbursement for federal funds available under the CARES Act for the same purpose, including, but not limited to, funds available under sections 1102 and 1106 of the CARES Act; or if it has received, claimed, or will claim other reimbursement, that reimbursement or an estimate of it has been reflected in the request for equitable adjustment.

(2) Its request reflects all applicable credits (estimated if necessary), including

(i) Tax credits, including credits allowed pursuant to division G of Public Law 116-127; and

(ii) Applicable credits allowed under the CARES Act, including applicable credits for loan guarantees.

(d) The Government's treating--for the purpose of beginning negotiations--the costs as allowable, does not mean the Government--in determining the amount of the equitable adjustment is fair and reasonable--will agree to the Contractor's proposed adjustment to the price or to the hourly rates and materials costs.

(End of clause)