

Section 3610 Implementation of DPC Class Deviation 2020-00013 (Revision 1)

1. Section 3610 Army Prescription

The Coronavirus Aid, Relief and Economic Security (CARES) Act was enacted on March 27, 2020 and authorizes contracting officers to deviate from FAR 31 and DFARS 231 provisions for the purpose of implementing Section 3610 of the CARES Act. Section 3610 provides relief to contractors struggling to maintain a workforce positioned to respond and support mission readiness.

Effective immediately, Contracting Officers/Agreements Officers shall modify affected contracts and contract-like instruments (e.g. OTAs, Cooperative Agreements, other non-traditional contracting instruments, etc., without consideration of other factors, IAW DFARS 231.205-79 (a)(1)(ii)(A) and (B). The goal for accomplishing this action is NLT 24 April 2020.

2. Contractor requests 3610 relief:

The contractor asserts in writing:

- i. The contractor is providing leave (including sick leave) to its employees or subcontractor employees “to maintain a ready state, including to protect the life and safety of Government and contractor personnel” at the appropriate rates of the contract for up to an average of 40 hours per week for contractor/subcontractor costs incurred not otherwise reimbursable, due to the COVID-19 Public Health Emergency (PHE) declared on 31 Jan 20;
- ii. The leave is taken between 31 January – 30 September 2020;
- iii. That they have not or will not pursue reimbursement for the same costs accounted for under their request under 3610;
- iv. 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.;
- v. The contractor has reduced the maximum allowable reimbursement under section 3610 by credits allowed under Division G of the Family First Coronavirus Response Act, Cares Act, or any other credit allowed by law associated with the COVID-19 Public Health Emergency declared on 31 Jan 20;
- vi. 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;
- vii. All costs incurred under section 3610 are segregated and identifiable in the contractor’s records so compliance with section 3610 can be easily ascertained; and

- viii. The contractor has read and complied with all requirements of DFARS 231.205-79 Cares Act Section 3610.

3. Contracting Officer completes a determination to include the following:

A formal D&F is not required. However, the Contracting officer is required to document their determination for the contract file that, at a minimum, include the recommended language provided below.

FINDING: Pursuant to Section 3610 of the CARES Act, (insert contractor name/contract XXXX) meets the requirements at DFARS IAW DFARS 231.205-79 (a)(1)(i) and (ii).

I have determined that contractor (*insert contractor name*) is an “affected contractor” and based upon contractor assertions and statements, the costs of paid leave are allowable and appropriate rates under the contract for up to an average of 40 hours per week.

- a. Cannot perform work on a site that has been approved by the Federal Government, including a federally-owned or leased facility or site, due to facility closures or other restrictions, and
- b. 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

DETERMINATION: Based upon the foregoing contractor assertions and attestations as documented in the contract file, I determine that the submitted labor costs are allowable and predicated on the effects of the COVID-19 pandemic. Reimbursement of any said costs will be subject to the provisions of the CARES Act Section 3610, FAR Part 31, and DFARS Subpart 231.

4. Contracting officer modifies the contract, IAW Changes clause (reference 52.212-4(c) and 52.243-1, 2, 3, 4), to allow for contractor reimbursement under DFARS Deviation 231.205-79 regardless of contract type. Contracting officers are to include National Interest Action (NIA) code (P20C) on each CLIN/SLIN established to track funding obligated under the CARES Act. Lastly, Contracting officers should ensure clauses to address subject to availability of funds and limitation of funds such as FAR Clause 52.232-18 or 52.232-22, are included in the contract. Based on contract type, include a CLIN/SLIN consistent with guidance provided in the DPC "Implementation Guidance for Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act" memorandum.

Due to the complexity of implementing Section 3610 of the CARES Act, the ODASA(P) will continue updating guidance as new developments arise.

(*) For additional information, please visit the DASA(P) PAM website at <https://spcs3.kc.army.mil/asaalt/procurement/SitePages/COVID-19.aspx>