



Defense Pricing & Contracting (DPC) Policy Guidance



May 13, 2020



Small Business Webinar

Defense Pricing and Contracting Update

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DPC guidance and focus

- ◆ **DPC's mission is to provide policy and pricing guidance to the DoD contracting workforce enabling efficient purchasing of over \$300B annually**
- ◆ **During the COVID-19 pandemic DPC has focused on policy that:**
 - » **Allowed companies to continue to work**
 - » **Provided liquidity to the industrial base**
 - » **Implemented legislation benefitting industry**
 - » **Improved the speed of contracting activity**
 - » **Provided spending transparency**



Key examples

- ◆ **Allowed companies to continue to work**
 - » Defined the Defense Industrial Base as critical infrastructure
 - » Encouraged contracting officers to authorize telework to the maximum extent possible
- ◆ **Provided liquidity to the industrial base**
 - » Raised progress payment rates to 90% (large) and 95% (small)
 - » Worked across DoD to accelerate awards and payments
 - » Encouraged the major primes to accelerate payments to subcontractors
 - » Changed voucher process on classified contracts



Key examples (continued)

- ◆ **Implemented legislation benefitting industry**
 - » **CARES Act section 3610**
 - » **UCA authority for COVID-19**
 - » **Performance Based Payment DFARS final rule**
 - » **Accelerated payments for Small Business DFARS final rule**
- ◆ **Improved the speed of contracting activity**
 - » **Numerous items allowing for faster transactions**
- ◆ **Provided spending transparency**
 - » **Guidance on coding and segregating actions/cost for COVID-19**

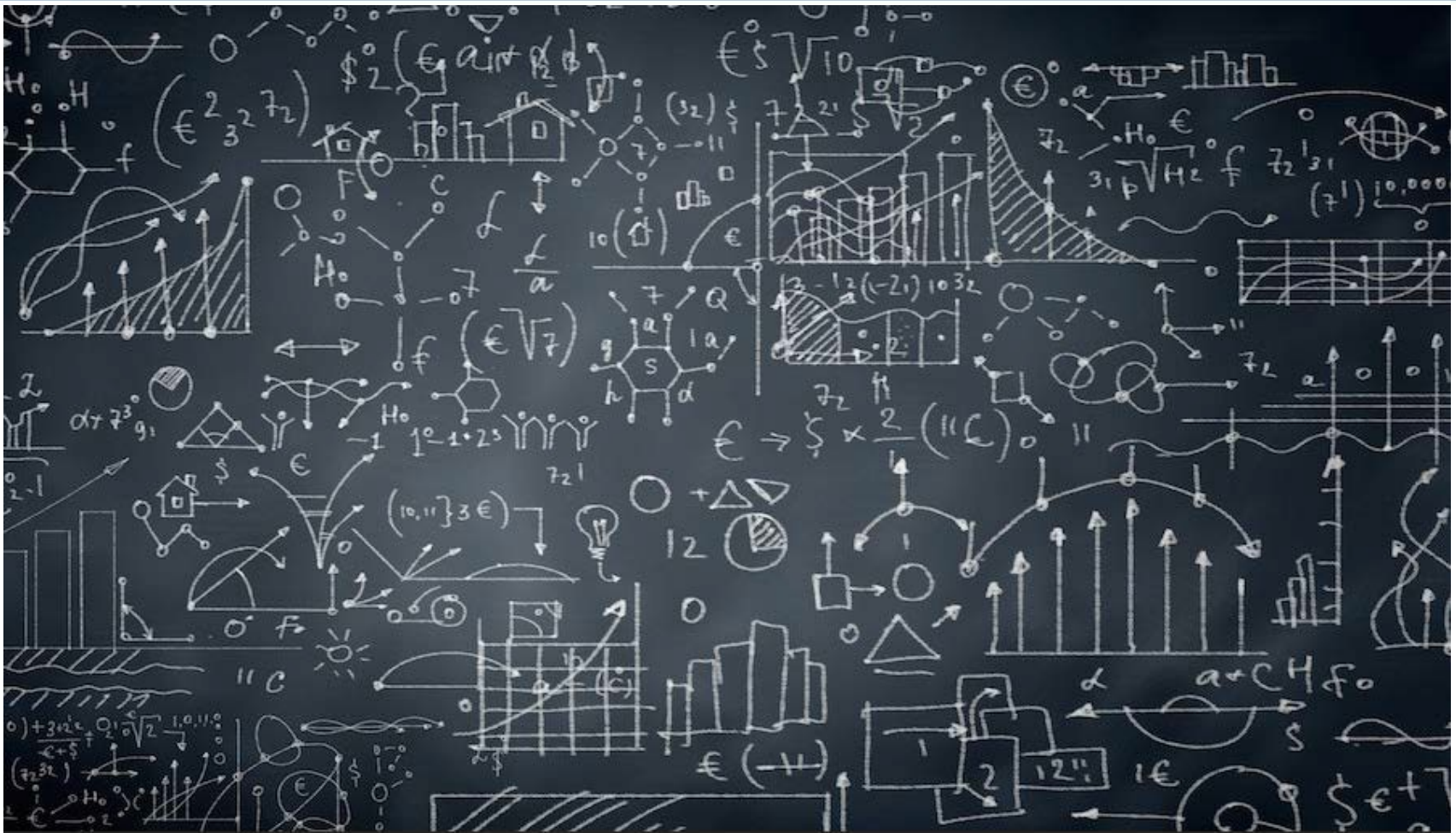


CARES Act Section 3610

Notwithstanding any other provision of law, and **subject to the availability of appropriations**, funds made available to an agency by this Act or any other Act may be used by such agency to modify the terms and conditions of a contract, or other agreement, **without consideration**, to **reimburse at the minimum applicable contract billing rates** not to exceed an average of 40 hours per week any paid leave, including sick leave, a contractor provides to keep its employees or subcontractors in a **ready state**, including to protect the life and safety of Government and contractor personnel, but in no event beyond September 30, 2020. Such authority shall apply only to a contractor whose employees or subcontractors **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 who can not telework because their job duties cannot be performed remotely during the public health emergency **declared on January 31, 2020** for COVID-19: *Provided*, That the **maximum reimbursement authorized by this section shall be reduced by the amount of credit** a contractor is allowed pursuant to division G of Public Law 116-127 and any applicable credits a contractor is allowed under this Act.



The easy guide to section 3610



Herrington Quote: "It only took us 15 pages to explain a paragraph"



Department of Defense Guidance

- ◆ **DPC issued class deviation 2020-O0013 “CARES Act Section 3610 Implementation” on April 8, 2020 – the deviation creates a new cost principle to implement 3610**
- ◆ **On April 9, DPC issued a memorandum “Implementation Guidance for Section 3610 of the Coronavirus Aid Relief and Economic Security Act”. This memo included an initial set of Frequently Asked Questions (FAQs).**
- ◆ **The FAQs have been updated on multiple occasions based on questions from the field and industry**
- ◆ **Other federal agencies have issued similar guidance and OMB issued their 3610 guidance on April 17, 2020, however DoD contracts will be modified based on DoD guidance**



What does 3610 do?

- ◆ **Allows federal agencies to reimburse affected contractors for paid leave to keep their employees in a “ready state” if they are unable to perform work at their normal duty location and unable to telework**
- ◆ **Goal is to keep employees paid (not laid off) and companies solvent with ample liquidity so that they are ready to resume work**
- ◆ **Covers employees of subcontractors as well**
 - » **Suppliers would work with their primes, who in turn would work with the federal agency**
- ◆ **Caveat – subject to availability of appropriations (funds)**



DoD specifics

- ◆ DoD to date has not received appropriations or funding specific to 3610 or COVID-19 impacts in general
- ◆ DoD has requested additional funds due to COVID-19 impacts to include 3610
- ◆ DoD may utilize funds that are otherwise legally available for use under a contract for section 3610 reimbursement
- ◆ DoD may pay incurred paid leave costs (after Jan 31st and no later than Sep 30th) but not prospective costs (no profit/fee will be included)
- ◆ Evaluating how to handle at a division or company level to lessen the administrative burden of doing at the contract level (does not preclude contract level agreements)



DoD specifics (continued)

- ◆ DoD has developed a “checklist” and guidance on what is required to support requests for reimbursement (target publication is May 22)
- ◆ DoD expects the number and magnitude of requests to be limited due to guidance that the defense industrial base is part of the national critical infrastructure and the majority of companies continued to work, and expanded telework options were made available
- ◆ DoD encouraged small businesses to take advantage of the paycheck protection program (PPP) which could be a faster/more complete way to cover impacts associated with the 3610 provision (these amounts would be deducted from 3610 reimbursable costs if loan forgiven)



DoD pricing issues

- ◆ **As noted, other financial relief would adjust costs recoverable under 3610 (no “double dipping”)**
- ◆ **Leave costs are generally indirect so “the accounting math” documentation will be critical to any request (for example if indirect employees are claimed adjustments to overhead rates must be made)**
- ◆ **Various challenges exist to determining the appropriate adjustment, such as:**
 - » **How will costs be allocated across DoD, federal and commercial contracts?**
 - » **How will COVID-19 leave costs be segregated?**



Summary

- ◆ DoD has and will continue to partner with industry to ensure the DIB remains strong and able to fulfill warfighter requirements
- ◆ DPC plays a key role in ensuring this occurs
- ◆ DPC has a dedicated page for COVID-19 guidance and information

» <https://www.acq.osd.mil/dpap/pacc/cc/COVID-19.html>



Questions?

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“
A patriotic passion to serve small businesses that protect the warfighter.
”





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