

2 April 2020

Proposed Implementation Guidance: CARES Act **SECTION 3610. FEDERAL CONTRACTOR AUTHORITY**

On 27 March 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (CARES), Public Law 116-136. This Act provides both the private and the public sector meaningful assistance associated with the coronavirus pandemic. Section 3610 of the CARES Act specifically provides relief to industry partners that work with the Federal Government on a daily basis.

Effective 27 March 2020, subject to the availability of appropriations, contractors who are working under reduced manning at a Federal Government site(s), or a site approved by the Federal Government, may be reimbursed at the minimum applicable contract billing rates, not to exceed an average of 40 hours per week of any paid leave (including sick leave), that a contractor may provide to keep its employees or subcontractors in a ready state, including to protect the life and safety of Government and contractor personnel. For the purposes of Section 3610, all contractor facilities that are part of the Defense Industrial Base as identified in the “Memorandum On Identification Of Essential Critical Infrastructure Workers During Covid-19 Response” dated March 28, 2020 (<https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce#download>) where work is performed in support of a US Government contract that cannot be performed at home (for example, facilities where manufacturing or classified work is performed) shall be considered “a site that has been approved by the Federal Government.” This authorization will remain in effect until rescinded, but in no event will go beyond September 30, 2020.

This authorization 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 Government-owned or leased facility, due to facility closures or other restrictions, and who cannot telework because their job duties cannot be performed remotely during the public health emergency declared on January 31, 2020 for COVID-19. The maximum reimbursement authorized by Section 3610 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 the CARES Act.

For all Cost Reimbursement, Time and Materials, Labor Hour, and Fixed Price Level of Effort contracts, contractors shall separately track all paid leave by labor category associated with COVID-19 from actual hours worked, and shall separately identify those hours in a supporting document attached to applicable invoices. Supporting documentation shall include the reason why, and evidence in support thereof, the claimed hours that could not be worked.

For all Fixed Price contracts, contracting officers shall modify the contracts to add a Labor Hour COVID-19 CLIN. Contractors shall separately track all paid leave by labor category associated with COVID-19 (“Eligible Leave”) from actual hours worked, and shall submit an invoice under the COVID-19 CLIN, not more than once per month, with the number of hours of Eligible Leave per labor category. Supporting documentation shall be attached to the invoice to identify the reason why, and evidence in support thereof, the claimed hours that could not be worked. Eligible Leave shall be reimbursed at the lowest applicable rate for each identified labor category as determined by: 1) a contractor’s current Forward Pricing Rate Agreement (FPRA); or 2) where a contractor does not have a FPRA, reference to the current Forward Pricing Rate Proposal (FPRP); or 3) where a contractor has neither a FPRA or FPRP, the lowest labor rate paid to an employee in the applicable category. Contractors shall provide proof in the form of pre-contract proposal documentation in support of these labor rates.

Implementation of Section 3610 of the CARES Act in this manner is important to ensure that the Federal Government is able to maintain the skilled workforce that supports the Critical Infrastructure in the event

the current coronavirus pandemic prevents our critical trades and other highly specialized workforce from working for a sustained period, as well as those of our supply chain.