

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

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 will treat as allowable if they are otherwise allowable, the costs of paid leave (including sick leave) the Contractor or its subcontractors have provided or will provide to have kept or to keep employees in a ready state if--

(1) The employees: cannot perform work due to a closure of a facility approved by the Federal Government (including a federally-owned or leased facility or site) or other restriction; 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 September 30, 2020.

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

(b) The Contractor must, among other things, when revising its billing rate (and in its subsequent final incurred costs proposal) ensure the rate and proposal reflect--

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

(2) Applicable credits allowed under the Act.

(c) A failure of the parties to agree on the equitable adjustment will be considered to be a dispute in accordance with the "Disputes" clause of this contract.

(End of clause)

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~~ Pursuant to the CARES Act, the Contractor may request equitable adjustment to the price (for a fixed-price type contract) or to the hourly rates and materials (for a time-and-materials type contract) of this contract ~~for, the Contractor may propose and the Government will treat for the purpose of beginning negotiations as allowable if they are otherwise allowable,~~ the estimated or incurred costs of paid leave (including sick leave) the Contractor or its subcontractors have provided or will provide to have kept or to keep employees in a ready state. The equitable adjustment shall be made in the same manner as if the Contracting Officer had directed the leave under the “Changes” clause of this contract if--

(1) The employees: ~~cannot~~ are unable to perform work due to a closure of a facility approved by the Federal Government (including a federally-owned or leased facility or site) or other restriction; 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 September 30, 2020.

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

(b) The Contractor must, among other things, when revising its billing rate (and in its subsequent final incurred costs proposal) ensure the rate and proposal reflect--

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

(2) Applicable credits allowed under the Act.

(c) A failure of the parties to agree on the equitable adjustment will be considered to be a dispute in accordance with the “Disputes” clause of this contract.The

~~Government's treating for the purpose of beginning negotiations the costs as allowable if they are otherwise allowable, does not mean the Government in determining the amount of the equitable adjustment is fair and reasonable will agree to the Contactor's proposed adjustment to the price or to the hourly rates and materials. A cost for a supply/service may be reasonable, for example, but greater than another amount that is also reasonable for the same supply/service~~

(End of clause)