

May 22, 2020

Mr. Herrington  
Acting Principal Director, Defense Pricing and Contracting  
Office of the Secretary of Defense  
3060 Defense Pentagon  
Washington, D.D. 20301

Mr. Herrington:

Thank for you for the opportunity to comment on the draft DoD Process for 3610 Implementation Guidance. The following comments are my own personal comments and do not reflect the opinion of my employer Aronson LLC.

**Time is of the essence**

I applaud the efforts of the DoD and the agencies that have issued guidance on payment under 3610. I act as a business consultant to many small businesses and one of the consistent themes of questions I receive is about the interaction of 3610 and the PPP. In responding to those questions, I have learned that if one abides by the ultimate goal that reimbursement should only be made one time, this becomes a very complex matter. The care that has been taken in the draft instructions for 3610 reimbursement reflects this. For the most part, I follow the need for the required documentation. However, many of my clients are small businesses that have limited access to capital. I am concerned that even with PPP funds, small businesses will soon run out of credit capacity to finance their operations. As of this date, many small business contractors have been covering payroll on employees unable to work full time, on government sites. It has been almost two months since the CARES Act was made law and payroll comprises a significant amount of their expenses. Given the time needed to consider the comments on the draft guidance and the likely changes that will be made, plus time for Companies to compile and provide the information and the time it will take contracting officers to make determinations, it may be many months before small businesses begin to see payment of qualified invoices. Small businesses do not have the access to capital to wait much longer for relief. They have in good faith, kept on their employees with the promise of 3610. However relief may come too late. While fraud and abuse is not acceptable, a balance must be made to keep the industrial defense base intact, much of which is with small businesses. I urge you to issue the final guidance immediately and within that guidance, require contracting officers to make determinations within 15 days of receipt of application from a small business contractor, if not sooner.

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### **Interaction of PPP with 3610**

In Section 2 A. iii. of the Implementation guidance, it is stated that contractors should not be reimbursed for the same costs for which it is requesting reimbursement. As you know, PPP funds are restricted to labor and a small amount of other qualified costs. Please clarify if a contractor applies PPP funds to direct labor whether 3610 will separately cover indirect costs that have not been otherwise reimbursed.

### **Other guidance is needed on the interaction between telework and PPP**

While not an issue related to 3610, I encourage your office to quickly address whether contractors that were able to tele-work are eligible for PPP forgiveness too. I can see how CPFF type contracts will permit recovery of PPP funds used for claimed costs, I am struggling to see how those costs will be treated under T&M and FP contracts.

If you would like additional information about my comments above, please feel free to call me anytime at 301.231.6277.

Sincerely,

James M. Muscatello, CPA, CGMA

Partner

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