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

Mr. Herrington,

Thank you for this opportunity, we have much appreciation for the work involved on this topic. We understand the need for guidance to support Contracting Officers in making a determination under the provisions of the CARES Act 3610. We also know that much in federal contracting is officiated “after the fact” and we will have full 2020 vision (no pun intended) at a later date. We value the “pause” to provide guidance and the actions thus far by DoD in trying to get this right but the clock is ticking and if contractors are delayed much longer or are put at risk the spirit of the 3610 provision will be completely lost. We (contracting community) all want to ensure to;

- Limit Fraud Waste and Abuse
- Maintain Public Trust
- Meet Policy Objectives
- Support Agency Missions
- Maintain the Industrial Base (Workforce)

Specific comments have been inserted on the attached draft of the checklist. Overall the checklist is burdensome and requires too much information and it is not clear what the information will be used for.

Section 5 (b)

All contractors are pushed into providing cost data and in many cases these contractors may not have had previous requirements for an adequate accounting system (specifically labor hour contracts). I fear the data provides many opportunities to deny full cost recovery for contractors and thus what is the benefit of taking on the risk and maintaining a workforce and payroll. In the end more harm than good may be accomplished if this permissive leave is too risky or burdensome for the contractor.

Section 5 (d)

Fringe and leave data requested appear to indicate a requirement to use current leave or that 3610 leave is net of other leave. This would detrimentally impact these employees and take away a benefit they are entitled too. The spirit of 3610 was additional leave. Also in the case of Collective Bargaining Agreements (CBAs) and contract employees covered under Service Contract Labor Standards, the contractor is required to give certain benefits regardless of 3610 leave thus any “netting” of leave currently in the fringe pool could be harmful.

Section (6)

In regards to the Paycheck Protection Program, we request that DoD reflects that the “crossroad of PPP and 3610” is impacting our most vulnerable contractors (small ones). Many of Aronson’s clients did not take the loan due to the hopes that 3610 and continued telework would keep their employees productive. For those contractors that did apply for an receive PPP the instructions for forgiveness were not released until May 15, 2020 and the program is continually coming out with new guidance. While there is a clear understanding that a contractor cannot “double dip.” Small contractors really need the “credit/loan forgiveness to be accounted for after approved by the lender and the amount is known. We recommend guidance that allows for full 3610 reimbursement until loan forgiveness is known and add a requirement for a contractor to “credit back” amounts within XX days upon notification of the loan forgiveness to allow for transparent and accurate accounting that ties to artifacts (loan application, loan proceeds, uses of proceeds and ultimate notification of amount forgiven). Additional guidance would be helpful in the treatment of amounts partially forgiven, such as allowance for a pro-rata allocation.

Additional question (and more dollars at risk) include contractors that receive PPP and are still working (under telework not 3610) are also required to “account for/give back” the credit/loan forgiveness. Aronson has been consistent with the message that credits must be accounted for under loan forgiveness. However, account for and bill are two different activities; cost reimbursable contracts will naturally have the credit passed through but how does DoD anticipate recovery of the credit on LH and FFP contracts.

Thank you for engaging the community and your consideration.

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