

May 22, 2020

Mr. Kim Herrington
Acting Principal Director, Defense Pricing and Contracting

Re: Draft DoD Process for Section 3610 Reimbursement: Overarching Guidance

CohnReznick appreciates the opportunity to provide feedback on the draft guidance on requests for reimbursement under Section 3610 the Coronavirus Aid, Relief, and Economic Security (CARES) Act as posted on the DPC site on May 18, 2020.

- **Guidance regarding the cost accounting standards (CAS).**

The draft guidance does not mention any impacts related to the requirements of the Cost Accounting Standards. In the checklist, we noted under 5b that the contractor may want to point to their CAS disclosure statement, among other supporting documentation, to explain their typical treatment of leave costs. Based on the unusual circumstances, guidance should be updated to encourage contracting officers not to enforce requirements of the Cost Accounting Standards related to proposed/claimed CARES Act Section 3610 direct costs as there is a high risk of that contractors will be challenged with complying with CAS 401 (consistency between estimating, accumulating and reporting) and 402 (consistency with allocating costs incurred for the same purpose). Furthermore, the administrative burden across the fully CAS-covered industry base to update disclosure statements for this situation could add an unnecessary non-value added exercise to this already administratively challenging situation. As such, guidance should be added to instruct DOD administrative contracting officers to waive the requirement to update disclosure statements related to this set of circumstances.

Accordingly, we recommend that the following language be added to the Overarching Guidance at the end of Section 4:

Contracting officers should not enforce Cost Accounting Standards requirements as they apply to any claimed direct CARES Act Section 3610 cost as there is a distinct possibility that these costs may be treated differently from previously disclosed practices. Contracting officers still must evaluate the proper allocability of costs per the supporting documentation provided by the contractor including the application of indirect costs. Administrative contracting officers who oversee fully CAS-covered contractors are encouraged to not necessitate disclosure statement revisions related to accounting practices that are temporarily adjusted to conform to these unusual circumstances.

- **Timing of Credits against Funding Requests and Invoicing**

Within Paragraph 2Aiii, the Overarching Guidance references DoD's intention to offset any claimed Section 3610 costs with CARES Act related credits that the contractor receives. It is unclear if there is flexibility with regards to contracting officer notification

and invoicing. As indicated in the guidance, DoD presumes a reimbursement will come from the CARES Act credits whereas in reality, contractors may or may not receive a credit until payroll is reconciled and the forgiveness process is performed. We believe DoD should revise this guidance to clarify several points.

- Allow for flexibility on the timing of reporting and invoicing of credits. Payroll Tax compliance is often a complex matter, particularly for smaller contractors who rely on outside assistance. Then there is the added complexity of collecting and validating subcontract-related claims. As such, all firms should be given a 6-month window after the end of the COVID-19 emergency to notify contracting officers of all credits received and provide a full reconciliation in its claim.
- Checklist item 6a discusses how forgiven proceeds from Payroll Protection Programs loans should be excluded from claims and or treated as a credit. The final determinations of loan forgiveness may lag from when contractors are making a claim and there may be instances where contractors may not have all or part of their loans forgiven as expected. The DoD should enforce the intention of the CARES Act to keep businesses going and allow maximum flexibility to claim costs upfront and then apply credits later as they finalize. A reconciliation of credits is warranted but needs to be done thoughtfully after all cost have been posted and determined appropriately. Consider 3610 reconciliation audits to be a requirement of the reimbursement request. Auditors then could create procedures to be applied to fully determine no double dipping occurred and that all credits either payroll or PPP were properly allocated to the federal government agencies appropriately.
- Further guidance on PPP forgiveness credits, Q23 on DOD guidance dated 4-24-2020 regarding PPP credits need to be clarified. We suggest credits be applied to invoices where PPP monies were utilized to pay employees over the covered period. DOD should understand that the administrative burden with allocating the PPP credits across all contracts, and crediting the associated pools to ensure there is no double counting of these cost would benefit neither the contractor nor the Government. DOD used this same argument for applying the 3610 credit in its 3610 reimbursement request. This matter needs to be addressed as the government contracting community has been struggling with how to credit back the PPP funds if forgiven and has only been able to speculate.

- **Request for Reimbursement**

Within Paragraph 2ii, the guidance says leave cost for which the contractor requests reimbursement have to be incurred and paid prior to the date of the contractors reimbursement request. Did DOD expect that contractors would apply for 3610 after September 30th as this statement applies. 3610 is about cashflow needs that are the

priority to keep personnel in ready state. DOD should remove the word paid from this provision of the guidance.

- **Unnecessary Burdensome Checklist Requirements**

The Draft Checklist Instructions state the checklist is “a tool designed to assist contractors in identifying the information that will be needed to evaluate a COVID-19 Paid Leave request for reimbursement” and that “the checklist is not intended to be all-inclusive and contracting officers may require additional information in making their determinations.” The way this reads to us is that contractors will be expected to compile all of the information in the checklist to provide to contracting officers for their evaluation. Guidance should be clarified such that the support necessary should be dependent on relevant factors such as the revenue size of the contractor, the size of the CARES Act claim(s) and overall exposure to the federal government. The contractor should be allowed to submit as much information as they deem necessary to demonstrate the allowability and allocability of the costs claimed with the checklist provided as a guide. Alternatively, the checklist could be turned into guide on how contracting officers, cost/pricing analysts and auditors can evaluate the claimed CARES Act costs.

Within the checklist itself, we find the following areas to be potentially overly burdensome, particularly for smaller businesses or other businesses who have limited claims.

- Item 4 which requires all DoD contract numbers/order numbers/agreements, etc. and ALL contracts/orders/agreements, etc. with other Federal Agencies under which the contractor is seeking Section 3610 reimbursement is more complex than it seems. Other agencies have different rules and interpretations regarding Section 3610 reimbursements. Other agencies, and even different DoD components, may not immediately agree on whether or not the company is an “affected contractor.” There may also be funding issues. It is overly burdensome to submit ALL of the contracts of the contractor either federally or commercially that are receiving 3610 of this information when funding is in question. A certification by the contractor should replace this requirement that would require the contractor to certify only asking for reimbursement from one source for the affected employees.
- Item 5b includes a request for “Adequate data, documentation, and information to support the requested Section 3610 reimbursement (provided in electronic format whenever possible).” Is the government looking for all timesheets and payroll information up front? Depending on the size of the claim, this could be an extremely lengthy process to download all of these documents. Contractors will be depending on accurate timekeeping and financial summary level reporting, which can be verified on a test basis by the contracting officer or auditor. What purpose does the contracting officer need to know the status of the accounting system? This could cause delays and unnecessary questions. 3610 is meant to benefit many small contractors who have never had an accounting system approval and have prepared a self-certification. We suggest

allowing the contractor to submit an SF-1408 form with the reimbursement request, if necessary.

- **Other checklist concerns**
 - Per checklist item 5b, second bullet, “A description of how the contractor developed appropriate rates and what the rates include. Appropriate rates can include labor rates, overhead, and G&A, but may not include profit or fees” We suggest the second sentence be modified to say, “Appropriate rates can include labor rates, and all applicable indirect burdens such as overhead and G&A, but may not include profit or fees.”

We appreciate the ability and the time to respond to the draft DOD 3610 Guidance as this is an extremely important relief mechanism for our contractors and subcontractors. There needs to be an open-mind and balance of data that is necessary at the time of the reimbursement to keep the work force at “ready-state”. Audits and reconciliations are an essential part of any funding and therefore, quickly getting funding to contractors that need it should be the priority and an expectation from the contractor that additional information will be required subsequently as is normal with government contracting in general.

Sincerely,



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