



May 22, 2020

Mr. Kim Herrington
Acting Principal Director
Defense Pricing and Contracting
3060 Defense Pentagon, Room 3C958
Washington, DC 20301-3060

Subject: Comments by Huntington Ingalls Industries (HII) on Draft DOD Section 3610 CARES Act Implementation Procedures

Dear Mr. Herrington:

Thank you on behalf of HII for the opportunity to offer the following comments on the Department of Defense's (DOD) draft implementation procedures for Section 3610 of the CARES Act. Section 3610 is a critical acquisition tool to provide needed support for DOD's mission partners in the defense industrial base that are dealing with the financial and workforce impacts of the COVID-19 pandemic. Timely and efficient processes and equitable approaches to reimbursements under Section 3610 are imperative to maintaining a healthy, responsive, and competitive industrial base and workforce.

We appreciate DOD's efforts within the draft guidance to drive consistency across the Department in implementation of Section 3610, while preserving flexibility in dealing with various types of contracts, situations, and contractors, and we support DOD's stated desire to administer reimbursements authorized under Section 3610 of the CARES Act above the contract-by-contract level. Unfortunately, in attempting to balance these sometimes competing objectives into a 'one-size-fits-all' solution, the procedures as written would require the assembly and submission of information at a scope and on a scale that we believe would deter 3610 reimbursement requests, fail to provide critical support in a timely manner if even pursued, and will likely result in inconsistent application and inequitable treatment across DOD that will have significant competitive implications for the defense industrial base.

In particular, we are concerned about the guidance provided that addresses how claims by subcontractors would be administered through the prime contractors. Flowing down the guidance's requirements on prime contractors to their subcontractors on a subcontract-by-subcontract basis in order for each subcontractor to support their own claims will be particularly burdensome to the subcontractors, prime contractors and Federal government. Instead we suggest that certain aspects of each subcontractor's claim be administered through the respective subcontractor's cognizant Administrative Contracting Officer (ACO). That way the prime contractors receiving subcontractor claims may rely upon the cognizant ACO's determinations as a basis and support for a prime contractor's processing of the subcontractor's Section 3610 claims that may be submitted to their DoD customers.

Further we believe that the segregation of responsibilities among contracting officers in administering Section 3610 claims should be made consistent with the current segregation of duties between cognizant ACOs (ACOs, DACOs and CACOs) for the respective contractor business segments, and the Purchasing Contracting Officer (PCO) and acquisition command structures for both prime contractor and subcontractor claim administration. In taking this approach we believe the DOD/ Government and contractors will realize significant efficiencies, including:

- Establishing a contractor's/subcontractor's affected contractor status once;
- Ensuring duplicative claims are not being processed and are being adequately supported; and
- Ensuring claimed hours and costs meet the requirements for equitable adjustment consideration as authorized by Section 3610.

In this regard we believe it the responsibility of the cognitive ACO (business segment's ACO, DACO or CACO) to be responsible for the following activities in support of the Section 3610 claim process:

- Establish whether the business segment is an affected contractor;
- Establish allowability of the contractor's/subcontractor's COVID-19 related costs;
- Validation and approval of the accounting controls to ensure claimed costs are not claimed multiple times;
- Validating and approving the methodology for assigning the COVID-19 claimed hours to final cost objectives based upon the claimed employees' prior three month's charging trends;
- Validation of adequate documentation to support the claimed paid/sick leave hours as being COVID-19 related AND that the employees couldn't work remotely AND that no more than an average of 40 hours per week was being accounted for before establishing the claimed COVID-19 hours;
- Validating that the appropriate labor and overhead rates are being applied to the claimed COVID-19 hours; and
- Ensuring provisional billing rates (e.g. forward pricing rates, ICS rates or final rates) are appropriately being updated to reflect the impacts of the claims, COVID-19 impacts to schedule, and other timely adjustments.

Further, we believe it the responsibility of the PCO and/or service acquisition command to be responsible for the following:

- Verifying availability and application of funding;
- Establishing, applying and documenting consistent payment approval criteria between contractor claims;
- Reviewing the adequacy of the prime contractor claims or of subcontractor claims submitted to DoD directly where a subcontractor is unwilling to submit its proprietary and/or competition sensitive cost and pricing information to their prime contractor;
- Providing guidance to prime contractors on assessing subcontractor claims submitted through the prime's claim;
- Providing guidance to prime contractors with regard to flow down requirements to subcontractors;
- Selecting representative contracts to administer the contracting segment's REA claims;
- Providing billing guidance to prime contractors for approved claims; and
- Modifying the selected contracts to administer payment of any approved REA claims.

DCAA should provide support and advice to both cognizant ACOs and PCOs/acquisition commands in carrying out their responsibilities.

While we believe we will be able to successfully establish that our HII business units are affected contractors, we are concerned about whether the guidance is sufficient and clear for many subcontractors to adequately use as they seek determinations about their being “affected contractors”. Therefore we encourage such guidance be made more clear and practical for both the DOD’s Contracting Officers and the prime and subcontractors so that such guidance will be applied consistently across the DoD industrial base.

We also strongly encourage the use of early engagement discussions between contractors, subcontractors and their respective cognizant ACOs and customers with the objectives being to assure understanding, consistency and efficiency in the consideration and processing of Section 3610 claims for reimbursement.

Finally, with regard to the application of the DFARS 231.709-79, CARES Act Section 3610-Implementation, cost principle, we believe this clause outlines an application of CAS 418’s “distributed direct” principle. Under this approach, COVID-19 related paid time hours paid to employees unable to work remotely would be captured within a COVID-19 distributed direct pool and then assigned to final cost objectives (commercial, FFP, FPIP, cost reimbursement, T&M, etc.) based upon the historical charging of the employee’s time for the three months prior to the paid time being claimed. This methodology would ensure equal application to all final cost objective and ensure different Government customers received their fair share of the claimed hours on an appropriate causal beneficial relationship. The methodology could be adjusted so that if representative contracts are being used to administer the claims such hours would be assigned to those contracts, where appropriate actual labor rates and overhead rates can then be applied. Non-COVID-19 claimed costs would then remain in their respective overhead pools, to be allocated over the total pool base.

Thank you for your consideration of our comments. Please do not hesitate to contact me directly with any questions.

Sincerely,

M. B. Waldman
Executive Vice President
Huntington Ingalls Industries