

We respectfully submit the following feedback on the 18 May 2020 “DRAFT DoD Process for Section 3610 Reimbursement: Implementation Guidance”. The Government should clarify that:

1. Contract overhead and G&A on FFP contracts are allowable costs for Section 3610 reimbursement; and
2. Legally- and/or contractually-required benefits for contract employees on paid leave (e.g. SCA Wage Determination health & welfare, vacation, sick leave, and holiday benefits incorporated into the contract) are allowable costs for Section 3610 reimbursements.

The U.S. Army Medical Command (MEDCOM) has issued written guidance to contractors stating that “fringe benefits, G&A, profit, and overhead” are not allowable costs for reimbursement. We believe MEDCOM’s interpretation is inconsistent with DFARS 231.205-79 and DoD guidance, so clarifying the foregoing points would be appropriate.

DFARS 231.205-79(b)(1) provides that the “costs of paid leave (including sick leave), are allowable at the appropriate rates . . . .” Like all costs, “costs of paid leave” includes the sum of the allocable direct and indirect costs. FAR 31.201-1. Fringe benefits, G&A, and overhead are indirect costs. DoD’s 9 April guidance states that “when the permissive authority under section 3610 is used, . . . [t]o the extent that the contractor workforce is shared across multiple contracts, contracting officers will need to coordinate on a reasonable allocation of costs, ideally through the administrative contracting officer.” See Kim Herrington, Def. Pricing & Contracting, Off. Under Sec’y Def., Implementation Guidance for Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act (Apr. 9, 2020), Caution-[https://www.acq.osd.mil/dpap/policy/policyvault/Implementation\\_Guidance\\_CARES\\_3610\\_DPC.pdf](https://www.acq.osd.mil/dpap/policy/policyvault/Implementation_Guidance_CARES_3610_DPC.pdf) (last visited May 5, 2020). The concept of “allocation of costs” is precisely a reference to indirect costs, such as fringe benefits, G&A, and overhead. FAR 31.203

Furthermore, with respect to fringe benefits, the Contract and the Service Contract Labor Standards explicitly require covered contractors to pay contract personnel certain fringe benefits in addition to base rate pay, e.g. health and welfare payments and holiday pay. See 29 C.F.R. §§ 4.175(a)(1) (requiring the payment of health fringe benefits “for all hours paid for, including paid vacation, sick leave, and holiday hours”) & 4.176 (requiring the provision of holiday pay for part-time employees).

We agree with the idea of excluding profit. In this regard, DoD’s guidance states that “profit or fee” will not be reimbursed as part of 3610 relief. See Def. Pricing & Contracting, Off. Under Sec’y Def., Implementation Guidance for Section 3610 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act: Frequently Asked Questions (Apr. 24, 2020) at 5, [https://www.acq.osd.mil/dpap/pacc/cc/docs/covid-19/FAQ\\_Implementation\\_Guidance\\_CARES\\_Act\\_Sec\\_3610\\_2020.04.24.pdf](https://www.acq.osd.mil/dpap/pacc/cc/docs/covid-19/FAQ_Implementation_Guidance_CARES_Act_Sec_3610_2020.04.24.pdf) (last visited May 5, 2020). That makes sense as “profit or fee” is not a cost. But, fringe benefits, G&A, and overhead most certainly are costs. FAR 31.201-1, FAR 31.203. MEDCOM’s guidance, therefore, would require contractors to incur costs to keep its personnel in a ready state for which the MEDCOM is precluding reimbursement.

We believe MEDCOM’s guidance is inconsistent with DPC’s guidance and respectfully request DPC remove any ambiguity.

Very respectfully,

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