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Answers to the questions below may change as guidance is updated or provided.

### **Fort Meade Alliance - DISA Webinar – April 24, 2020**

#### **References:**

- A. Office of Under Secretary of Defense (OUSD) Acquisition & Sustainment (A&S) Memo, Class Deviation - Coronavirus Aid, Relief, and Economic Security Act Section 3610 Implementation (Class Deviation 2020-O0013, signed 8 Apr 2020 ([https://www.acq.osd.mil/dpap/policy/policyvault/Class\\_Deviation\\_2020-O0013.pdf](https://www.acq.osd.mil/dpap/policy/policyvault/Class_Deviation_2020-O0013.pdf)))
- B. OUSD A&S Memo, Implementation Guidance for Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act, signed 9 Apr 2020 ([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))
- C. OUSD A&S Frequently Asked Questions (link to FAQ sent with ref b above, but FAQ page is being continually updated with new information) ([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))

**1. With current reduced government staffing how long should we expect "regular" invoices to be approved and paid?**

A: DISA has not experienced reduced staffing. Payments should not be affected and are being processed within normal contractual timelines. If this is not the case, contact your contracting officer.

**2. What are DISA's plans for responsiveness related to situations that require commanding officer approval under the CARES Act Section 3610 given their current limited resources? There are certain situations that the act guidance states to contact the contracting officer for commanding officer approval, and this has been tough. Due to the reduced manning at the government and being assigned to contractiig officers that are typically not assigned to our contract, it's been difficult to get a hold of the points of contact we need, and some also seem confused as to why we need approval.**

A: DISA has not experienced reduced staffing. No contracting officer changes have occurred in DISA.

**3. Will there be increased opportunities to perform unclassified work remotely as business begins to shift back onsite? Has DISA considered making any changes for allowing remote telework for unclassified assignments and roles?**

A: DISA's contracts incorporate "alternate duty sites/locations" and may be implemented in accordance with the contract. If this is not in your contract, it should be discussed on a case-by-case with the contracting officer's representative..

**4. Generally, how is DISA implementing The CARES Act? Will the Defense Federal Acquisition Regulation Supplement clause be implemented across the board for all DISA contracts?**

A: DISA will implement the DFARS clause implementing The CARES Act as needed and applicable but not on an across-the-board basis. Prime contractors need to work directly with their contracting officers if they believe this clause is necessary for their contract.

**5. Can you advise as to what small business subcontractors should be doing with regard to invoicing for CARES Act Section 3610?**

A: Subcontractors should follow the direction given to them by the prime contractor, as they receive the guidance from their contracting officer.

**6. Does DISA foresee any requests for proposals being released in April or through Mid-May?**

A: Yes. DISA is operating as “business as usual” regarding our planned acquisitions.

**7. For companies who do not have a presence or access to the facility and the likelihood of limited industry days in the near future, how should a company try to get in contact with DISA to find out what it needs and how can a company best present its capabilities to DISA?**

A: A company that is not familiar with DISA should review the DISA.mil website, which provides extensive information that includes who we are and what we do. In addition, DISA’s five-year forecast of opportunities is posted to the website. This should be reviewed to determine if the opportunities match the company’s core competencies. If the company is a small business, review the Small Business portion of DISA’s website for information: <https://www.disa.mil/About/Small-Business>.

**8. Given the disruption caused by the COVID workforce reductions, will your agency publish a revised Industry Forecast in the near future?**

A: Yes. DISA plans to update the current forecast and will post it to DISA.mil in June.

**9. During this interim time and in order to maintain readiness for DISA’s business base, can you facilitate virtual one-on-one matchmaking webinar sessions between your prime vendors and small businesses (an online Business in a Minute)?**

A: At this time, there are no plans for virtual matchmaking. However, DISA’s Office of Small Business is hosting a DISA 101 virtually. For more information about the DISA 101 or to register, go to the DISA.mil website: <https://www.disa.mil/About/Small-Business>.

**10. How does DISA envision engaging with industry as it relates to new ideas and areas of innovation that would enhance industry’s ability to deliver solutions while operating in this new environment?**

A: DISA continues to engage with industry for innovative ideas. This includes our other transaction authority process where we post our requirements for innovative solutions to [Dreamport.tech](https://www.dreamport.tech). Additionally, requirements can be implemented via our Systems Engineering, Technology and Innovation (SETI) contract. Industry partners that have innovative solutions that they’d like to demonstrate can submit a request via the Technical Exchange Meeting process; information can be found on the DISA.mil website: <https://www.disa.mil/About/Industry-Partners> (select “Demonstrate Your Product to DISA”).

**11. Are there any new Small Business opportunities as a result of COVID?**

A: DISA awarded several contracts to small businesses related to COVID-19. As a requirement of DISA’s standard operating procedures, contracting officers first determine if small business can execute the requirement. DISA is executing the COVID requirements as an immediate priority and always considers small business first when making acquisition decisions.

**12. How do you envision a return to normal?**

A: DISA will follow guidance provided by the Office of Personnel Management, Office of the Secretary of Defense, DISA headquarters and local base/installation commanders for returning to the worksite. Until that time, DISA and its contractor employees should continue to report to their alternate work locations to perform their duties.

**13. Is this correct that CARES Act Section 3610 does not apply to Firm-Fixed-Price contracts and so small business subcontractors cannot bill the costs for our employees on this program who have not been able to work while their counterparts on other programs can bill for time not worked? We are a small business on a contract that is FFP between the prime and the government. The prime contractor is stating that CARES Act Section 3610 does not apply and that we cannot bill for the time our folks have not been able to work, nor can we bill for the hours that they continue to not be able to work in the future for as long as they remain on an altered schedule.**

A: The CARES Act contemplates FFP contracts and the ability for both the prime and subcontractors to invoice for the hours if those hours fall within the DFARS 231.205-79 CARES Act Section 3610 - Implementation clause. Please review the OUSD A&S Memo, Implementation Guidance for Section 3610 of the CARES Act, signed April 9, 2020, for additional/detailed guidance regarding FFP prime contracts.

**14. As a prime contractor, can our invoices include subcontractor labor? Would subcontractors be required to complete a certification as well?**

A: See FAQ #27 for required documentation as it related to required documentation.

**15. If a new option year was exercised subsequent to March 27, 2020, can the new option year rates (exclusive of fee) be used?**

A: DISA has forwarded this question to the Office of the Director, Defense Pricing and Contracting.

**16. If it appears payments will go past 30 days, would the customer consider establishing a process to prioritize which invoices are paid first, such as over \$2.5M for large companies and over \$500K for small companies?**

A: DISA has not experienced reduced staffing nor has Defense Finance Accounting Service; therefore, payments should not be affected and are processed in normal contractual timelines. If this is not the case, contact your contracting officer.

**17. How does the government plan to handle award fee contracts if for part of the time covered in the award fee period is under CARES Act Section 3610 charging?**

A: DISA has forwarded this question to the Office of the Director, Defense Pricing and Contracting requesting a response.

**18. Can costs associated with cost plus award fee programs be retroactively added to the fee pool?**

A: DISA has forwarded this question to the Office of the Director, Defense Pricing and Contracting requesting a response.

**19. Will DISA be providing their CARES Act Section 3610 invoicing guidance to DCAA?**

A: The guidance released by DPC has specific instructions on adding line items to contracts for obligation, invoice, and payment. Defense Contract Audit Agency has been instructed with the same guidance. See OUSD A&S Memo, Implementation Guidance for Section 3610 of the CARES Act, signed April 9, 2020.

**20. For CARES Act Section 3610 invoices for cost plus contracts, do those still need to go to DCAA first?**

A: All invoices will continue to go through the normal process stated in the contract.

**21. We are still performing on our FFP Services contract and following our company's guidelines for safety and social distancing. Are we entitled to invoice our full monthly contracted FFP services amount? What does the government use to consider 'full services' performed?**

A: If all contracted services are performed in accordance with the terms and conditions of the contract, the contractor should invoice in accordance with the contract terms and conditions.

- 22. Is it possible for a CO to provide a temporary waiver during COVID-19 to allow a contract's functional program management office (Business Management, Contracts, Subcontracts) to perform unclassified work remotely (per company policy)? And if so, can the waiver be provided regardless of whether a company's disclosure has PMO functions built into the overhead or is a direct charge to the contract? If the company's network is NIST SP 800-171 (Defense Federal Acquisition Regulation Supplement) compliant and is appropriately secured to handle and protect controlled unclassified information, this will allow the processing of invoices, reports, deliverables, etc. in a safe environment. If a company regularly permits telework for their functional support staff then they may continue working in accordance with company regulations.**

A: DISA's contracts incorporate "alternate duty sites/locations" and may be implemented in accordance with the contract. If this is not in your contract, it should be discussed case-by-case with the COR and contracting officer.

- 23. What challenges do you foresee as you enter the summer months and prepare for end of fiscal year reporting in Sept?**

A: DISA anticipates the fiscal year end to be completed/executed as "business as usual."

- 24. How has the forced 'distancing' and reduced interaction with industry affected the government-industry partnership? What do you think is necessary to restore, and perhaps even strengthen beyond, previous levels?**

A: At DISA, we have seen exceptional cooperation between DISA and our industry partners working through these challenging times and we will build on this cooperation. DISA has not experienced a situation where we need to restore partnerships (or relationships).

- 25. If a contractor tests positive for the COVID virus but is able to work remotely, will contractors be permitted to work remotely if work is unclassified?**

A: This is contract dependent. DISA's contracts already incorporate "alternate duty sites/locations" and may be implemented in accordance with the contract. However, as the Department of Defense is prioritizing the protection of our forces—including service members and their dependents, civilians, and contractors – our primary concern is focused on the contractor's health and ensuring that the contractor personnel are able to perform their duties.

- 26. How does the government expect the decision to be made to cease the work at contractor site due to lack of productive work? Will the government provide this direction, or should the contractor make this decision? As the pandemic continues and government direction becomes limited, the amount of productive work is reducing which establishes a concern for enough meaningful work for those personnel originally designated at government site but have been authorized to work at contractor site with approved meaningful / productive work.**

A: This would be contract-specific and at the discretion of the contracting officer and COR.

- 27. What initial lessons learned has DISA's acquisition and contracts organizations identified as a result of the COVID-19 pandemic and its impacts to operating conditions? Do you foresee any changes (major or minor) to how you run future acquisitions in a post-COVID-19 environment?**

A: DISA found that our contracts were written with flexibility to switch to an almost full-time telework environment and that the government furnished equipment requirements in our contracts supported this change

because the terms and conditions included alternate duty locations and identified mission-essential personnel and contracts.

As far as changes, we will review our lessons learned to see what we did well and areas we can do better.

- 28. Is there a plan to provide more uniformity to the invoicing process? Most small companies are sub-dependent on large primes to issue universal guidance on how to invoice. We continue to wait on charge codes from the primes, yet there are some companies that have given out COVID-19 admin codes. Recommend simply bill on the same charge line as before, as opposed to a new and modified charge code.**

A: As applicable, contracts will have to be modified to add a contract line item to bill against after negotiations with contracting officers. OUSD A&S Memo, Implementation Guidance for Section 3610 of the CARES Act, signed April 9, 2020, provides information for implementation.

- 29. Can you please advise as to what small business subcontractors should be doing with regard to invoicing for CARES Act Section 3610? Meaning must we wait for a contract mod and invoicing approval / instructions from our primes provided to them by their COs before we are able to invoice even if this process takes weeks? We have not been given the approval by our primes yet to invoice for these hours and they are telling us we need to wait until they receive guidance from their contracting officers on how to bill and for funding modifications. The info from our prime contractors seems to be contradictory to what we are seeing in the FAQs.**

A: To be able to invoice in accordance with the CARES Act, a modification to the prime contract would need to be executed before the prime can invoice for reimbursement. Subcontractors are able to invoice for any costs allowed through the CARES Act but these costs need to be executed in accordance with the prime contract.

- 30. Does the Prime or the CO get to determine if it is acceptable to invoice for hours with regard to CARES Section 3610? We are a small business with several HIGH RISK (confirmed with doctors' notes) employees who are self-isolating and haven't been working. Per the FAQs from last week, it states that we ARE able to bill for their hours not worked. However, when we inquire with our primes on how to invoice for this, they tell us we need to wait and that they need to find out if this is approved through their contracting officers. Or can we just go by the guidance provided by the FAQ which states we ARE able to invoice for this situation? We certainly realize that things take time to determine, but our HIGH RISK out on leave employees are getting very nervous and are eager to know if they will be able to bill or not for their time off program.**

A: DISA contracting officers will ask for detailed information from the prime contractor regarding contractor/subcontractor employees who are affected by COVID-19 in the event a prime contractor notifies the contracting officer they intend to seek relief under the CARES Act.

- 31. What guidance on the implementation of the CARES Act Section 3610 guidelines for FFP contracts will be provided as to how it flows down to subcontractors performing via a Time and Materials or Fixed Price Level Of Effort subcontract relationship?**

A. Contractual terms regarding flowdown remain the same as in the prime contract with the government. No changes would occur because of this act. Authorized reimbursable costs may be invoiced in accordance with the DFARS 231.205-79 CARES Act Section 3610 – Implementation clause when modified into the contract. The government is not aware of contracts with the subcontractor. If subcontractors are not able to invoice for proper costs associated with their contract and this clause, they should reach out to the contracting officer first or for small businesses, the Office of Small Business Programs for assistance.

- 32. How should Fixed Price Level Of Effort rates with subcontractors be treated in regards to removing fee if that is required?**

A: See question #16 - OUSD A&S Frequently Asked Questions: "Will profit or fee be reimbursed under this deviation?" No, it will not be reimbursed. Since a fee is not allowed, the answer to this question is also no.

When working with your Contracting Officer on the modification in support of the CARES Act, contractors will be required to submit a proposal for the subcontractor LOE rates that does not include fee.

- 33. Under a T&M arrangement, does the fixed T&M rate itself qualify as the minimum applicable contract billing rate? If no, is it appropriate for the Prime contractor to have Subcontractors remove their loaded fee from their standard T&M rate on contract?**

A: The OUSD A&S Memo, Implementation Guidance for Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act, signed April 9, 2020, Reference B, paragraph 3 states: Under Time and Materials or Labor Hour contracts, creation of a separate line item for this reimbursement under section 3610 authority should enable segregation of these costs, upon receipt of a request for equitable adjustment. The information on supporting documentation would be retained for audit, while the interim voucher would be provisionally approved and paid under existing procedures.

- 34. If a contractor designated at a government site, has been approved for meaningful work by the CO/COR at a contractor facility, can this contractor work be part-time/partial hours at the contractor site each week to perform the meaningful/productive work? For example, a contractor performs 16 hours of meaningful/productive work at the contractor facility for the program during a given week. The other 24 hours, a contractor is at home due to COVID-19 government site restriction. Will the contractor be able to submit a program invoice of 16 hrs. and a separate CARES Act Section 3610 invoice for the 24 hours, totaling a regular 40-hour week?**

A: Most of DISA's contracts are written to incorporate "alternate duty sites/locations" and may be implemented in accordance with the contract. If this is not in your contract, it should be discussed on a case-by-case basis with the COR and contracting officer. If home is an acceptable alternate duty location, the 40 hours should be invoiced as normal and not under the CARES Act.

- 35. If employees were given raises after March 27, are contractors able to invoice the new direct labor rate? Or are rates frozen as of March 27?**

A: DISA has forwarded this question to the Office of the Director, Defense Pricing and Contracting requesting a response.

- 36. Does the guidance that the bill rates to the government under CARES Act Section 3610 is exclusive of fee apply only to prime contractors or does that need to be flowed down to subcontractors who are FFP or T&M?**

A: That guidance would flow down to the subcontractor.

- 37. Can we expect any delays or changes to Award Fee schedules for contracts with Award Fee periods that ended in Q2 based on the current environment?**

A: DISA has not experienced reduced staffing. Payments should not be affected and are being processed in normal contractual timelines. If this is not the case, contact your contracting officer.

- 38. Will the government identify procedures for equitable adjustments against firm fixed price, service level agreement-driven contracts, where restrictions were imposed on number of people that could work at government facilities, but no changes were made to scope of work or SLA's?**

A: Most of DISA's contracts incorporate "alternate duty sites/locations" and may be implemented in accordance with the contract. If this is not in your contract, it should be discussed case-by-case with the contracting officer.

- 39. Will the government provide to industry the general guidance given to COs, referring specifically to allowable charges, who are administering completion based contracts / task orders or IDIQs with unit based pricing?**

A: Please read references A, B, and C noted at the top of this document.

- 40. With cost saving measures that are in place across contracts, many contractor facilities have similar population density as the government facilities. For protection of the critical workforce, is the government in alignment that contractor facilities follow similar staffing level profiles as government sites as DISA returns back to normal operations?**

A: Contractors should follow federal, state, and local guidelines for physical distancing.

- 41. Does the government have a preference for the contractor to bill to CARES Section 3610 if appropriate or funded Paycheck Protection Program loans if applicable?**

A: To the extent that Paycheck Protection Program credits are allocable costs under a contract, the government should receive a credit or a reduction in billing for any PPP loans or loan payments, regardless of whether the PPP loan is forgiven.

- 42. Please confirm the exact dates from March 18th to <specific date?> for age > 60 based on the DISA and CDC guidelines for authorized CARE Act Section 3610 reimbursement. CDC Guidelines were first established with age > 60 considered HIGH RISK, and then adjusted to age > 65.**

A: Please read references A, B, and C noted at the top of this document.

- 43. Will the government consider a contractor employee, who has a HIGH RISK individual (based on CDC guidelines) living with them and under their care, also as HIGH RISK and thus reimbursable based on CARES Act Section 3610 guidance?**

A: Please read reference C noted at the top of this document and the response to question 7. There may be cases where the work sites are open and accessible, but, for public health reasons or family care issues, contractor employees cannot be in the workplace and cannot otherwise work remotely. As established in Office of Management and Budget (OMB) guidance and echoed within the DoD, contractors are part of the total force of military and civilians (both government and contractor personnel) and are required to ensure a safe work environment, balanced with the need for continued mission support and readiness.

Therefore, contractor employees who did not report to an open work site due to the COVID-19 pandemic may be viewed as being kept in a “ready” state if all other criteria under Section 3610 have been met. Section 3610 provides considerable discretion to treat paid leave as an allowable cost. However, contractors also bear the burden of supporting any claimed costs, including claimed leave costs for their employees, with appropriate documentation. In seeking a determination of affected contractor status that would make this new cost principle applicable, a contractor must also identify any applicable credits it is allowed under the CARES Act or Division G of Public Law 116-127 that will reduce reimbursements.

- 44. Will CARES Act Section 3610 coverage be extended to employees who stayed home to help protect a member of their household deemed high-risk by CDC standards?**

A: The CARE Act may be applicable when the work cannot be performed at the primary work location or at an alternate duty location. DISA contracts incorporate “alternate duty sites/locations.” If a contractor cannot work at an alternate place of performance The CARES Act may apply. Contractors should consult the COR and contracting officer.

- 45. Will documentation of HIGH RISK or quarantine be required? If so, it runs the risk of sharing personal health information.**

A: Please read reference C noted at the top of this document and the response to question 27. Per DPC: The documentation contracting officers require contractors to provide in the course of negotiations should include identifying the employees that were provided paid leave for which the contractor is seeking reimbursement, the

contract(s) the employees are performing under, and the amount and dates of the paid leave provided to the employees for which the contractor is seeking reimbursement. The contractor should also be required to explain, with respect to the employees, whose paid leave the contractor is seeking reimbursement, that the employees: (1) for the COVID-19 pandemic, work on a site approved by the federal government pursuant to the contract(s) under which the claimed costs are sought; (2) could not perform work on a federal government approved site due to closures or other restrictions resulting from the COVID-19 pandemic; (3) were unable to telework or otherwise work remotely under the applicable contract(s) during the COVID-19 pandemic, (4) received paid leave for a period beginning no earlier than January 31, 2020, and ending no later than September 30, 2020; and (5) were provided paid leave at rates calculated based on the rates the contractor would have paid the employees it is providing paid leave to but for the COVID-19 pandemic. The contractor should also state that: (a) the costs it is claiming are only for paid leave meeting all of the previous numbered conditions; and (b) that its claimed costs constitute the only reimbursement or payment it is receiving for this purpose, and that it is not being paid or reimbursed for the same costs via any other source or funding.

Additionally, contractors must provide appropriate documentation to support any claimed costs, including claimed costs for their employees' paid leave and documentation supporting all of the above information and explanations. Contractors must also identify any credits that may reduce entitlement to reimbursement under section 3610.

**46. For those employees who are HIGH RISK per the CDC Guidelines, how long are they allowed to stay home and still charge the contract per the CARES Act Section 3610?**

A: The CARES Act may be applicable when the work cannot be performed at the primary work location or at an alternate duty location. DISA contracts incorporate "alternate duty sites/locations." If a contractor cannot work at an alternate place of performance, the CARES Act may apply. Consult with the COR and contracting officer.

**47. If the contractor has a HIGH RISK individual (child, parent, spouse) living in their household and therefore chooses not to come to work so they do not place that individual at risk, is their company eligible to invoice for their time not worked?**

A: The CARES Act may be applicable when the work cannot be performed at the primary work location or at an alternate duty location. If a contractor cannot work at an alternate place of performance, the CARES Act may apply. Consult with the COR and contracting officer.

**48. In order for invoice approval per CARES Act Section 3610, will DISA require any documentation, or a physician's note, for any contractor that is identified as HIGH RISK per the CDC guidance? (note: we want to make sure we have any and all documentation you require ready at time of invoice submittal)**

A: Please read reference C noted at the top of this document and the response to question 27. Per DPC: The documentation contracting officers require contractors to provide in the course of negotiations should include identifying the employees that were provided paid leave for which the contractor is seeking reimbursement, the contract(s) the employees are performing under, and the amount and dates of the paid leave provided to the employees for which the contractor is seeking reimbursement. The contractor should also be required to explain, with respect to the employees, whose paid leave the contractor is seeking reimbursement, that the employees: (1) but for the COVID-19 pandemic, work on a site approved by the Federal Government pursuant to the contract(s) under which the claimed costs are sought; (2) could not perform work on such Federal Government approved site due to closures or other restrictions resulting from the COVID-19 pandemic; (3) were unable to telework or otherwise work remotely under the applicable contract(s) during the COVID-19 pandemic; (4) received paid leave for a period beginning no earlier than January 31, 2020, and ending no later than September 30, 2020; and (5) were provided paid leave at rates calculated based on the rates the contractor would have paid the employees it is providing paid leave to but for the COVID-19 pandemic. The contractor should also state that: (a) the costs it is claiming are only for paid leave meeting all of the previous numbered conditions; and (b) that its claimed costs constitute the only reimbursement or payment it is receiving for this purpose, and that it is not being paid or reimbursed for the same costs via any other source or funding.



Additionally, contractors must provide appropriate documentation to support any claimed costs, including claimed costs for their employees' paid leave and documentation supporting all of the above information and explanations. Contractors must also identify any credits that may reduce entitlement to reimbursement under section 3610.