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OFFICE OF MANAGEMENT AND BUDGET
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M-20-27

MEMORANDUM TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Michael J. Rigas
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SUBJECT: Additional Guidance on Federal Contracting Resiliency in the Fight Against the Coronavirus Disease (COVID-19)

This Memorandum supplements OMB Memoranda M-20-18[1] and M-20-22[2] with additional guidance that further addresses the resiliency of the federal acquisition workforce and the federal contractors who support our agency missions, including in the fight against COVID-19.

Working together, agencies and their contractors have made important strides in maintaining continued contract performance by seeking to maximize telework, and taking other steps to help maintain contractors in a ready state, as appropriate, and minimize the disruption caused by COVID-19. Equally important are the steps agencies have been taking to make new awards for critical activities, both to fight COVID and to enable the safe reopening of America.

Under the President's Management Agenda and the leadership of OMB's Office of Federal Procurement Policy (OFPP), the Administration has elevated the importance of acquisition innovation and category management as key pillars of a modernized procurement system. These pillars are proving to be critical assets in the face of market conditions that require heightened agility and the ongoing need for physical distancing as communities take steps to reopen. We are seeing smart use of existing contract vehicles and resources, supported by our category management market experts, such as for cleaning and disinfection, information technology related to telework and healthcare, and enhanced entry screening services. We are also seeing growing examples of agencies leveraging innovative business practices, such as virtual acquisitions, that save time and enable acquisitions to continue where they might otherwise have been stopped.

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[1] M-20-18 *Managing Federal Contract Performance Issues Associated with the Novel Coronavirus (COVID-19)* (March 20, 2020), available at https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-18.pdf.
[2] M-20-22 *Preserving the Resilience of the Federal Contracting Base in the Fight Against the Coronavirus Disease 2019 (COVID-19)* (April 17, 2020), available at https://www.whitehouse.gov/wp-content/uploads/2020/04/M-20-22.pdf.

With continued workforce diligence and information sharing, including best practices and lessons learned, agencies can deliver good value and guard against waste and abuse, despite unprecedented challenges. The attached set of "frequently asked questions" is intended to provide additional and updated guidance and highlight information and examples from agency guidance and activities that may further assist the acquisition workforce as it addresses impacts due to COVID-19. They also include reminders on a few potentially untapped flexibilities. For example, the government-wide purchase card might prove to be a valuable stop-gap mechanism for the acquisition of commercially available products above the micro-purchase threshold when existing vehicles cannot meet needs and market availability may evaporate faster than existing vehicles can be modified to add products.

Acquisition-related questions may continue to be directed to OFPP at MBX.OMB.OFPPv2@OMB.eop.gov. Agencies should encourage their contractors to periodically check acquisition.gov for additional procurement information and resources on COVID-19. OMB will provide further updates and information as needed to support the acquisition community in meeting the challenges of COVID-19.

Attachment

Attachment

Additional Guidance on Federal Contracting Resiliency in the Fight Against the Coronavirus Disease

Frequently Asked Questions

These FAQs address (1) acquisition efficiencies, (2) tracking procurement activity, (3) paid leave for contractor employees under Section 3610 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. No. 116-136), and (4) other considerations.

Acquisition Efficiencies

Remote Acquisition Strategies

1. **OMB Memorandum M-20-18 encouraged agencies to consider conducting acquisition activities remotely to help minimize disruption and actions to move forward. Are there specific examples of innovative acquisition strategies for conducting activities remotely that might be suitable in the current environment?**

   Yes. Table 1 describes a number of different remote acquisition strategies that agencies have employed successfully and that could be adapted to support acquisition work consistent with the Center for Disease Control's (CDC) social distancing guidance and applicable local health requirements.

Table 1. Examples of Remote Acquisition Strategies

Remote Acquisition Strategy	Examples of Agency Applications
Virtual Industry Day	• The National Aeronautics and Space Administration (NASA) held a Virtual Industry Day at Johnson Space Center for the Exploration Extravehicular Activity procurement. • The Department of Homeland Security (DHS) conducted a Virtual Industry Day, for data center and cloud optimization support services, and posted the recording for future viewing.
Virtual Requirements Development	• The U.S. Agency for International Development (USAID) issued a workforce guide with tips, for those considering virtual co-creation workshops with industry and non-profit organizations, and steps to take to ensure successful collaboration and actionable outcomes. • The Office of Personnel Management (OPM) is experimenting with a virtual facilitated requirements development workshop, based on the Steps to Performance Based Acquisitions, with an

	integrated product team to find creative ways to solve problems and mitigate identified risks.
Video Proposal	• The Federal Emergency Management Agency (FEMA) issued a solicitation which required a video proposal submission for software design/development and operations & maintenance. • FEMA issued a solicitation to modernize its grants management system, which required a video proposal and delivery of an MVP technology prototype via a secure web-based application.
Virtual Technical Demonstration	• The Department of Veterans Affairs' (VA) Technology Acquisition Center (TAC) issued a solicitation which required submissions via Drupal for digital evaluation of proposed user centered authoring process and other technical artifacts, with an optional virtual post award kick-off with the contractor. • The TAC issued a solicitation which required submissions of a mobile application cloud migration prototype. • The TAC issued a solicitation which required submissions via GitHub for digital evaluation of proposed coding artifacts.
Remote Technical Evaluation and Source Selection	• The U.S. Nuclear Regulatory Commission (NRC) issued a Request for Quote for an Acquisition Management System Solution which required vendors (quoters) to participate in a virtual live demonstration of their proposed commercial item software solution. Using technology to connect geographically dispersed vendors and Source Evaluation Panel (Panel) members, the Panel asked the vendors questions related to the functionality of their quoted software solution and evaluated the software solution in real-time. • The Drug Enforcement Administration (DEA) conducted a virtual source selection through videoconference with a geographically dispersed technical evaluation panel, using a procurement integrity form with instructions to remotely safeguard acquisition sensitive material and perform a consensus evaluation in real-time. • NASA used videoconference collaboration tools to conduct Source Evaluation Boards to review documents, discuss findings and have Selection Meetings.

	➢ Visit the Periodic Table of Acquisition Innovations to view samples from agencies who have used on-the-spot consensus evaluations and other innovative techniques: https://www.fai.gov/periodic-table/
Virtual Inspection	• The U.S. Department of Agriculture (USDA) completed 27 pilot virtual inspections of crops with mobile technology as an alternative to an on-site inspection.
Phone Interview	• The U.S. Customs and Border Protection (CBP) issued a Federal Supply Schedule solicitation for ground transportation guard services that used phone interviews in combination with a phased acquisition process to identify rapidly an offeror that is likely to be the best fit.
Remote Peer Reviews	• The Department of Defense (DoD) conducted peer reviews of both competitive and noncompetitive procurements via email, telephone, and video teleconference.

2. The FAR imposes certain requirements that cannot be performed remotely, such as the requirement in FAR Subpart 28.1 to require manual (wet) signatures or raised seals for bonds. Is relief available to agencies so that these activities can be performed remotely?

The General Services Administration (GSA) has been working to identify requirements in the FAR that cannot be performed remotely, develop deviations to such requirements where possible, and eliminate consultation requirements so that other civilian agencies may take similar actions expeditiously. Copies of these deviations may be found on acquisition.gov/coronavirus. One such deviation allows vendors and sureties the use of electronic signatures in lieu of manual signatures and eliminates the requirement for any seals for bonds.

DoD has published a Class Deviation to FAR Subpart 28 requirements to eliminate requirements for, or to permit alternatives to, wet signatures, corporate seals, notarization, and other requirements. DoD Class Deviation 2020-O0016 – Original Documents, Seals, and Notarization (30 April 2020) is available at https://www.acq.osd.mil/dpap/policy/policyvault/USA000941-20-DPC.pdf.

Other Innovations

3. What steps might be taken to quickly test an unsolicited capabilities statement for a solution, such as for screening capabilities to support the reopening of a facility, that looks promising but whose value is unknown?

Many vendors are interested in helping the government in the fight against COVID-19 and may be submitting unsolicited capabilities statements or proposals to explain their ideas or available solutions. If an agency comes across a capabilities statement for a solution that it

finds promising and might be able to leverage but lacks authority to support rapid testing, the agency's Senior Procurement Executive may contact DHS, GSA or DoD to determine acquisition collaboration opportunities to test those capabilities for operational suitability. Agencies may also send inquiries to the OFPP mailbox at MBX.OMB.OFPPv2@OMB.eop.gov.

Examples of authorities to support the development and deployment of innovative industry ideas to fight COVID-19, including emerging technology, include:

- The DHS 'commercial solution opening pilot' for innovative commercial products to detect exposure, prevention, containment and treatment of COVID-19 and similar microbial threats: https://beta.sam.gov/opp/7319f05fec5e43beb37574360e1e54f3/view?keywords=CSOP-HQ-CV-20-00001&sort=-relevance&index=&is_active=true&page=1

- The Department of the Navy's 'Small Business Innovation Research' Broad Agency Announcement to improve delivery of medical supplies, support, and care due to vulnerabilities exposed by the current COVID-19 pandemic: https://www.sbir.gov/node/1690813.

4. What role might prizes and challenges play in the fight against COVID-19?

Authorities such as challenge and prize competitions and crowdsourcing campaigns that are available to all agencies may allow teams to rapidly stimulate cross-sector collaboration to ideate and design new solutions for combatting COVID-19. It is also possible to structure a challenge in a manner that allows for a follow-on procurement for production. For an example of a two-phased challenge for a compact and lightweight respirator for chemical, biological and radiological hazardous environments, with a possible follow-on prototype or production agreement, go to https://www.challenge.gov/challenge/escape-respirator-challenge/. General information on prizes and challenges may be found at www.challenge.gov.

Category Management

5. OMB Memorandum M-20-18 listed a number of general category management resources and tools available to help agencies quickly determine where existing contract solutions for common goods and services may meet the many pressing requirements in connection with the COVID-19 response. Are there more specific links to particular COVID-related requirements?

Yes. Agencies can access available resources to help with COVID-19 acquisition support activities on the COVID-19 Acquisition Resources hub, https://hallways.cap.gsa.gov/app/#/gateway/covid-19-acquisition-hub. They include:

- Facilities and Construction: Cleaning and Disinfection
- Professional Services: Enhanced Entry Screening Services (EESS)
- Information Technology: GSA Supports Government Readiness Buying Guide

Purchase Cards

6. Is use of the purchase card encouraged for making open market purchases both below and above the micro-purchase threshold (MPT) as part of an agency's strategy for timely response to COVID-19 requirements?

Yes. Purchase cards are an efficient tool to make simple purchases when using simplified acquisition procedures below the micro-purchase threshold (an open market "micro-purchase"). They reduce administrative transaction costs for government payment offices by lowering the number of budgetary/accounting entries that need to be processed in financial management systems and help vendors receive timely payment without the burden of having to process government invoices. During an emergency, these benefits can be especially important in enabling quick execution of transactions, including expeditious payment to vendors, which may be critical for cash flow.

While the benefits of using purchase cards for payment above the MPT are well understood and continue to be encouraged, agencies should not overlook guidance in FAR 13.301(b) that encourages warranted contracting officers to consider using the purchase card as both a buying and payment tool above the MPT. For stand-alone purchases above the MPT but under the SAT, which, during an emergency, may be as high as $750,000 for domestic purchases and $1.5M for foreign purchases, a simple contract, such as the SF 1449, can be used to convey the applicable statutory and regulatory requirements. In this context, the purchase card may be especially effective for rapid, stand-alone purchases of widely available, off-the-shelf, steady-state commercial products that can be clearly and simply identified, described, and documented, such as with a product code from a catalog or online marketplace.

Authorized use levels should be carefully managed and coordinated through the Agency Program Coordinator, an employee designated to provide complete oversight of the local, regional or agency-wide Government Purchase Card Program within the agency, to ensure they are appropriately tied to the requirements and responsibilities of each contracting officer. In addition, for actions above the MPT it may be helpful for the senior procurement executive, in coordination with the agency's senior accountable official for category management, to identify products or classes of products for which purchase card usage will be most beneficial, taking into consideration products that may be efficiently accessible through an existing government-wide or agency-wide vehicle. These steps will help to maximize and harmonize the positive impact of existing contracts and purchase cards while avoiding wasteful spending and duplication of effort.

Additional Efficiencies

7. What steps has the AbilityOne Commission taken to provide responsive support for customer requirements related to COVID-19?

The Commission established a Contingency Support Operations and Communications (CSOC) group for the COVID-19 emergency. The CSOC focuses on providing real-time

information to federal agency COVID-19 responders on the availability and anticipated delivery of high-demand stock and raw materials, such as for masks and other personal protective equipment, sanitation products, medical supplies, and construction kits for emergency medical facilities. More than 90% of the AbilityOne network (about 500 nonprofit agencies total) remains open and performing mission-essential contracts with many extra production lines, shifts, weekend hours, and support for deep cleaning, meal, laundry, and commissary services. The Commission has also built an AbilityOne COVID-19 web page for rapid sharing of key information. By including clause FAR 52.208-9 in contract awards (as prescribed in 8.005, pursuant to FAR Subpart 8.7), agencies can help to ensure their prime contractors take advantage of AbilityOne capabilities to provide access to critical supplies and services in the fight against COVID-19.

8. **In light of the many disaster declarations issued in connection with COVID-19 following release of OMB Memorandum M-20-18, is there any change to the general guidance in FAQ #10 addressing the consideration of set-asides for local firms under the Stafford Act?**

No. At this time, there are disaster declarations in place for all 50 states (as well as the District of Columbia and 4 territories). As the disaster declarations collectively cover the entire nation, contracting officers are not expected to sort through multitudes of impacted localities.

However, contracting officers do retain authority to conduct local area set-asides and are encouraged to consider them when it makes sense such as when services or construction must be performed in a given location.

Tracking Procurement Activities

9. **What steps should the acquisition workforce be taking to facilitate tracking of contract spend related to COVID-19 using emergency procurement authorities?**

Note that this response supersedes response #11 in Memorandum M-20-18: The General Services Administration (GSA) has added a National Interest Action (NIA) Code to the NIA field in the Federal Procurement Data System (FPDS) as a means of tracking acquisition costs of the multiple federal agencies involved in the response to COVID-19, an incident of great national interest.

The NIA Code will be used for all procurement actions reported into FPDS that are issued in response to the pandemic. This includes new awards for supplies and services as well as modifications that are issued to address COVID-19, irrespective of whether the contract being modified was originally awarded to address COVID-19. The NIA Code should also be used in connection with any procurement authority, including but not limited to special emergency procurement authorities identified under FAR Subpart 18.2.

FPDS system details for this NIA Code are as follows:

- NIA Code Value Name: COVID-19 2020
  - Web Portal/Graphical User Interface (GUI) service users may select the value "COVID-19 2020" in the NIA Code drop-down field.
  - Contract Writing Systems (CWS) shall use the code of "P20C" when creating or updating documents associated with the COVID-19 response through Business Services.
- NIA Code Start Date: 03/13/2020
- NIA Code End Date: 09/30/2020 (note: please check for any extension(s) of this date)

Agencies should consult their internal policy offices regarding compliance with this and related FPDS requirements.

10. What, if any, steps should agencies take to facilitate tracking of solicitations related to COVID-19?

Note that this response supersedes response #12 in Memorandum M-20-18: Contracting officials are encouraged to use "COVID-19" or "Coronavirus" in their solicitations and related documentation to support easy key word searching for sharing buys when possible and recording contracts once awarded.

11. What steps must contracting officers take to meet the reporting and accountability requirements in OMB Memorandum M-20-21?

OMB Memorandum M-20-21[3] sets forth principles and guidance on spending transparency and regular reporting to provide accountability mechanisms that help safeguard taxpayer dollars. Memorandum M-20-21 adds **no new procurement requirements for reporting**, because the FAR already requires prompt reporting to FPDS (generally within 3 days) and that data is refreshed regularly on USASpending.gov. As a result, continued compliance with existing FAR requirements on data quality and reporting on contract awards is all that is currently required for compliance with Memorandum M-20-21 requirements related to procurement reporting.

[3] M-20-21 *Implementation Guidance for Supplemental Funding Provided in Response to the Coronavirus Disease 2019 (COVID-19)* (April 10, 2020) available at https://www.whitehouse.gov/wp-content/uploads/2020/04/Implementation-Guidance-for-Supplemental-Funding-Provided-in-Response.pdf.

Paid Leave for Contractor Employees Under Section 3610

The Role of Paid Leave

12. OMB Memorandum M-20-22 states that agencies must maintain a mission focus and reminds contracting officers that reimbursement is subject to the availability of funds. Are these cautions intended to discourage serious consideration of Section 3610?

No. The guidance recognizes the legitimate role of paid leave in keeping the contractor in a ready state and calls on agencies to give the provision careful consideration as part of multi-faceted resiliency strategy. At the same time, consistent with the express terms of Section 3610, the guidance reminds agencies that reimbursement is subject to reduction by the amount of credit a contractor is allowed under other provisions of the CARES Act and Division G of the Families First Coronavirus Response Act (FFCRA) (Public Law 116–127), which together include loan relief, favorable tax-changes, and other assistance.

In addition, because Congress did not appropriate funds for the express purpose of reimbursing paid leave under Section 3610, agencies must take budget constraints into account in determining if reimbursing paid leave is in the best interest of the government for meeting current and future needs. Because all agencies and their contracting base are not similarly situated, the extent to which agencies reimburse their contractors under Section 3610 will vary from agency to agency. For example, GSA has stated that it does not expect significant use of the paid leave reimbursement authority because nearly all GSA contractors are able to continue to perform their work as a result of actively promoting telework, GSA's critical infrastructure policy, accelerating payments, and other steps GSA took to keep stop work and suspension of work orders to a minimum.[4] Other agencies may reach different conclusions based on their mission requirements and their ability to keep their contractors working.

13. What are examples of considerations that might be made in determining if reimbursing paid leave is in the best interest of the government?

As explained in OMB Memorandum M-20-22, agencies should look at the funding they have available, the impact of funding or not funding additional paid leave and the mission impact of each alternative. For example, the agency might:

- Consider the skills required for the critical operation or the challenge for the contractor to resume operations if existing staff is no longer available.
- Consider where the contract is in its lifecycle, such as contract expiration.
- Weigh the costs and benefits of using the Section 3610 reimbursement authority and discuss the opportunity costs with the program office (requirements owner).

[4] GSAR Class Deviation – CARES Act Section 3610 Implementation CD-2020-12 (April 21, 2020) available at https://www.acquisition.gov/sites/default/files/page_file_uploads/CD-2020-12.pdf.

General Requirements for Reimbursement

14. Section 3610 states that any reimbursement for paid leave must support maintaining the contractor in a "ready state." What is a "ready state?"

"Ready state" refers to a contractor's ability to mobilize and resume performance in a timely manner as local conditions permit, consistent with the national guidelines for Opening Up America Again.[5]

15. Section 3610 states that the authority to reimburse for paid leave "shall apply only to a contractor whose employees or subcontractors cannot perform work on a site that has been approved by the Federal Government." What is meant by "a site that has been 'approved' by the Federal Government?"

Any place of performance identified in the contract or otherwise agreed upon between the contracting parties in accordance with the terms of the contract would qualify as an approved site for purposes of Section 3610. This may include a contractor or subcontractor facility at which contract services are performed.

16. If a contractor's work has been deemed essential and its employees have been provided an exemption to shelter-in-place orders, but it must operate on a scaled back schedule with fewer employees, as agreed upon with the contracting officer, in order to meet social distancing guidelines and related steps to ensure a safe work environment, may it be reimbursed for paid leave for those employees who are not working?

Yes. In this scenario, employees who are not working may be viewed as being kept in a "ready state" if all other criteria under Section 3610 have been met. In addition, because Section 3610 authorizes paid leave for a contractor's inability to perform due to restrictions other than facility closure, reimbursement might be available even if the work site is open and accessible, if for public health reasons, contractor employees cannot be in the workplace and the other criteria of Section 3610 have been met, including inability to work remotely.

17. Although a public health emergency was declared on January 31, 2020, OMB Memorandum M-20-22 states that reimb[redacted]

Section 3610 is additional discretionary authority. As such, this Section does not prohibit an agency from reimbursing a contractor for paid leave prior to March 27, 2020 under contract authorities otherwise available to the agency. As explained in OMB Memorandum M-20-18, paid leave may be available in some circumstances to support contractor resiliency, such as to keep national security professionals or skilled scientists in a mobile ready state for activities the agency deems critical to national security or other high priorities, or to pay leave as a bridge to hold over employees where a contract is being retooled for pandemic response. Any reimbursement for paid leave made prior to March 27 should not be identified as a payment made under Section 3610 for purposes of tracking and reporting.

18. **Must a contractor or subcontractor employee deplete his or her own leave before they become eligible for reimbursement under Section 3610?**

    Section 3610 does not require that employees deplete their own leave balances before contractors may seek reimbursement for the costs of paid leave provided to keep employees in a ready state.

19. **Does a contractor or subcontractor employee have to be completely unable to perform for leave paid to them to be eligible for reimbursement under Section 3610?**

    There is no such requirement that a contractor employee be completely unable to perform in Section 3610. Any paid leave provided to contractor or subcontractor personnel, for the purpose described in Section 3610, is potentially reimbursable if the necessary conditions for reimbursement have been met.

20. **Must reimbursement for costs claimed under Section 3610 be funded with CARES Act appropriations?**

    Because the provision is limited to needs arising in FY 20 that are not otherwise provided for in the underlying contract, an appropriation available to fund an FY 20 need must be used for reimbursements made pursuant to Section 3610.

21. **Section 3610 states that the maximum reimbursement authorized shall be reduced by the amount of credit a contractor is allowed pursuant to division G of the FFCRA and any applicable credits a contractor is allowed under the CARES Act.**

    a. **What are examples of applicable credits under these laws for which the maximum reimbursement may need to be reduced?**

       Section 2301 of the CARES Act establishes the "Employee Retention Tax Credit." Eligible employers that use their own cash flows to pay for payroll are entitled to a refundable tax credit against the employer portion of Social Security tax (or Railroad Retirement Act (RRA) tax) equal to 50 percent of "qualified wages" paid to employees after March 12, 2020 and prior to January 1, 2021 up to $5,000 per employee. For information on the rules related to eligibility for the Employee Retention Tax Credit and

how to claim the credit, see Internal Revenue Service FAQs: https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act.

Sections 7001 and 7003 of Division G of the FFCRA entitles employers to refundable tax credits against the employer portion of Social Security tax (or RRA tax) if the employer is required to pay sick or family medical leave wages to employee. For information on the rules related to the eligibility for the FFCRA paid leave refundable tax credits and how to claim the credit, see Internal Revenue Service FAQs: https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs.

b. Can a contractor request and be reimbursed for paid leave under Section 3610 before tax credits are known?

Yes. The status of the credits described above may not be known at the time reimbursement is requested or paid under Section 3610. The contracting officer is not required to delay reimbursement under Section 3610 until this certainty is resolved (which may be well after 2020) as this would create unintended cash flow challenges that could harm the contractor. However, the contracting officer must make clear to the contractor that the contractor is responsible for reporting on the status of credits requested and received and making any repayment necessary to be in compliance with Section 3610 and the requirement to reduce the maximum reimbursement authorized by the amount of credit the contractor receives.

22. Sections 1102 and 1106 of the CARES Act established the Payment Protection Program (PPP) to provide a direct incentive for small businesses to keep their workers on the payroll.

a. Must a contractor apply for relief under the PPP before it is eligible to seek reimbursement under Section 3610?

No. A contractor may seek reimbursement under Section 3610 without having pursued relief under the PPP.

b. Would payments made under the PPP established pursuant to Sections 1102 and 1106 of the CARES Act be considered duplicative of reimbursements under Section 3610?

The answer to this question depends on how a contractor uses funds received under the PPP. For example a business may wish to use the PPP to pay its employees for work they would have performed for commercial customers and request support under Section 3610 for time employees would have spent supporting federal customers. Because there is no overlap in the relief being sought, there would [redacted]

maintaining a ready workforce and potentially reduces the funds available to support new work opportunities for contractors, which could hurt the resiliency of the contracted workforce at large. However, to lessen administrative burden, agencies have the discretion to allow contracting officers to calculate a profit decrement from random sampling at the company level or the industry level. Likewise, contracting officers may accept a proposed decrement from contractors. In either case, any audit must support that the decrement calculation is reasonable.

Modifying Contracts

27. How might contracts be modified to address reimbursement for paid leave under Section 3610?

Modifications will depend on the contract type. Table 2 describes steps contracting officers might take in different contractual arrangements. As long as there is adequate documentation, contracting officers may be able to aggregate their decisions in some cases at a company's business unit level to reduce the number of modifications that must be processed.

Table 2. Modifying Contracts to Reimburse Paid Leave Under Section 3610

Contract Type	Nature of Modification
Time and Material (T&M) or Labor-Hour	Contracting officers could create separate line item(s) for this reimbursement under Section 3610 authority to enable segregation of these costs. The information and supporting documentation must be retained for audit, while the interim voucher would be provisionally approved and paid under existing procedures.
Cost-reimbursement	Contracting officers could create a separate line item for cost that would not include fee. They would need to work with the contractor to establish appropriate cost procedures. Additional efforts would be required to adjust the estimated costs. The information and supporting documentation would be retained for audit, while the interim invoice would be provisionally approved and paid under existing procedures.
Fixed-price	Contracting officers could establish one or more separate contract line items for Section 3610 COVID-19 payments to ensure traceability of expenditures. In the case of fixed price contracts with incentives, this should be a separate fixed price line item and not subject to the incentive structure.
Indefinite-delivery vehicle	Negotiations should occur at the task order level. Because Section 3610 specifies use of "minimum applicable contract billing rates," (*e.g.*, Federal Supply Schedule, government-wide acquisition contract) rates would not change. If the ordering agency negotiated a lower hourly rate, then that lower hourly rate becomes the minimum applicable contract rate for the purpose of this authority. Alternatively, agencies could require contractors to provide information on actual costs and use that information as the basis for reimbursement.

Documentation & Tracking

28. OMB Memorandum M-20-22 states that contractors must fully support and maintain documentation for claims made under Section 3610. What type of documentation should an agency seek to support a request for reimbursement under Section 3610?

It is important to secure fully supported documentation from contractors regarding claimed reimbursement, including relief claimed and received, along with the financial and other documentation necessary to support their requests for reimbursement under Section 3610. Because the status of the credits may not be known at the time reimbursement is requested or paid under Section 3610, some information and reconciliation of costs may need to occur after reimbursement. As explained in the response to question 21(b), the contracting officer therefore must make clear to the contractor that the contractor is responsible for reporting on the status of credits requested and received and making any repayment necessary to be in compliance with Section 3610.

Agencies should secure the contractor's agreement to segregate and report the actual costs of the leave payments for each employee (*i.e.*, actual cost for each employee's paid leave, including names of employees and number of leave hours). The agency should further advise that the government may audit the billed costs in order to ensure the accuracy and compliance with the law.

Contractors are responsible for supporting their requests for reimbursement. In evaluating a request, contracting officers might request appropriate documentation to address matters such as the following:

a. Identify -
   (i) the employees that were provided paid leave for which the contractor is seeking reimbursement,
   (ii) the contract(s) the employees are performing under, and
   (iii) the amount and dates of the paid leave provided to the employees for which the contractor is seeking reimbursement, which may be no earlier than March 27 and later than September 30.

b. Confirm that the identified employees –
   (i) work on a site approved by the Federal Government pursuant to the contract(s) under which the claimed costs are sought;
   (ii) could not perform work on such Federal Government approved site due to closures or other restrictions resulting from the COVID-19 pandemic;
   (iii) were unable to telework or otherwise work remotely under the applicable contract(s) during the COVID-19 pandemic;
   (iv) have been kept in a ready state and the contractor is prepared to resume performance in a timely manner; and

(v) 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.

c. Validate that the costs claimed –
   (i) are only for paid leave meeting all of the previous numbered conditions; and
   (ii) constitute the only reimbursement or payment it has received or expects to receive for this purpose, and if the contractor is subsequently paid, reimbursed or receives other credits or relief, it will promptly notify the government, provide documentation and other information and submit repayment as required to be in compliance with Section 3610.

29. What steps should be taken to track reimbursements for paid leave made using the authorities of Section 3610 of the CARES Act?

As an initial step to support accountability and transparency in connection with Section 3610, agencies should process modifications allowing payments authorized by the statute and report them to the Federal Procurement Data System (FPDS); entering "COVID-19 3610" at the beginning of the Description of Requirements data field on the contract action report (CAR) for the modification. Such CARs must also include the National Interest Action Code established for identifying all COVID related procurement actions (COVID-19 2020). Central collection of these data will support federal-wide analysis of contractor payments, both before and after award, to support oversight in the implementation of Section 3610 and help safeguard taxpayer dollars against duplicative and wasteful spending.

Additional Considerations

30. Where can DOJ's guidance on contractor employee mobility be found?

The Attorney General's April 8, 2020, memorandum on contractor employee egress for shelter-in-place orders can be found on the Coronavirus Acquisition-Related Information and Resources page at https://www.acquisition.gov/coronavirus. The memorandum explains that during the pendency of shelter-in-place and related orders from States and localities, the United States Attorneys will work with State and local law enforcement partners, as necessary, to ensure that local law enforcement officials enforcing travel restrictions are aware that federal contractor employees must be allowed to travel and commute to perform their work and should not be prevented from doing so, even when travel restrictions are in place. Such individuals may present either federal identification or federal agency authorization letters, as appropriate. DOJ has created an agency authorization letter template for agencies to use and provide to contract employees that lack federally issued identification.