



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION
AND SUSTAINMENT

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Implementation Guidance for Section 3610 Reimbursement Requests on Other
Transactions for Prototype Projects

The Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136) was enacted on March 27, 2020, in response to the Coronavirus Disease 2019 (COVID-19) national emergency declared on January 31, 2020. Section 3610 of the CARES Act authorizes, but does not require, agencies to reimburse any paid leave, including sick leave, a contractor provides to keep its employees or subcontractors in a ready state, including to protect the life and safety of Government and contractor personnel, during the public health emergency declared for COVID-19.

The language in section 3610 provides the authority to “modify the terms and conditions of a contract, or other agreements.” This includes Other Transactions (OTs) for Prototype Projects under 10 U.S.C. § 2371b. Defense Pricing and Contracting Class Deviations 2020-O0021, dated August 17, 2020, and 2020-O0013, dated April 8, 2020, and revised August 17, 2020, along with the associated Guidance for CARES Act Section 3610 Implementation, updated August 17, 2020, only apply to Federal Acquisition Regulation (FAR)-based contracts. However, the principles provided in these class deviations and associated guidance may be used in considering requests for reimbursement under Section 3610 in an OT for Prototype Projects agreement authorized under 10 U.S.C. § 2371b. Any request for reimbursement must be submitted to an Agreements Officer. If OT authority under 10 U.S.C. § 2371b(f) was used to enter a FAR-based contract for production, then Section 3610 reimbursement guidance in Class Deviation 2020-O0021 applies to section 3610 reimbursement requests under the FAR-based prototype production contract.

This memorandum remains in effect until Class Deviations 2020-O0021 and 2020-O0013 – Revision 1, and the associated Implementation Guidance are rescinded.

This memorandum does not apply to grants and other agreements (e.g., cooperative agreements, basic research agreements) that fall under the authority of the Office of the Under Secretary of Defense for Research and Engineering (OUSD(R&E)). The point of contact for grants and other agreements in OUSD(R&E) is Ms. Barbara Orlando, who may be reached at 571-372-6413 or by email at barbara.j.orlando.civ@mail.mil.

My point of contact is Mr. Larry McLaury, who is available at 703-697-6710 or by email at larry.j.mclaury.civ@mail.mil.

Kim Herrington
Acting Principal Director,
Defense Pricing and Contracting