



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

June 29, 2020

**MEMORANDUM**

**SUBJECT:** EPA's Initial Implementation of CARES Act Section 3610  
Report No. 20-N-0202

**FROM:** Sean W. O'Donnell 

**TO:** Douglas Benevento, Associate Deputy Administrator

Donna Vizian, Principal Deputy Assistant Administrator  
Office of Mission Support

The Office of Inspector General for the U.S. Environmental Protection Agency initiated work in [May 2020](#) to determine what guidance the EPA provided to its contracting personnel and contractors on how the Agency planned to implement Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act, known as the CARES Act, consistently with the statute. The project number for this work is OA&E-FY20-0220. This report contains no recommendations; therefore, you are not required to respond. However, if you submit a response, it will be posted on the OIG's public website along with this report.

**Background**

Section 3610 of the CARES Act, enacted in March 2020, authorizes—but does not require—federal agencies to modify the terms and conditions of a contract to reimburse agency contractors that provide pandemic-related paid leave to their employees or subcontractors to keep them in a “ready state,” including to protect the life and safety of government and contractor personnel. Per the statute, this reimbursement is:

- To be paid at the minimum applicable contract billing rates.
- Not to exceed an average of 40 hours per week of any paid leave, including sick leave.
- Not to apply to leave taken after September 30, 2020.

In addition, Section 3610 states that reimbursement authority shall apply only to contractors whose employees or subcontractors cannot perform work at a federally approved site due to facility closures or other restrictions and cannot telework during the COVID-19 health emergency.

On March 20, 2020, the Office of Management and Budget issued Memorandum [M-20-18](#), *Managing Federal Contract Performance Issues Associated with the Novel Coronavirus (COVID-19)*, urging federal agencies to work with their contractors to evaluate and maximize telework for contractor employees if they are unable to access federal and authorized sites due to quarantining, social distancing, or other pandemic-related interruptions. According to this memorandum, agencies should be flexible in providing extensions to performance dates if:

- Telework or other flexible work solutions, such as virtual work environments, are not possible.
- A contractor is unable to perform work in a timely manner because of health and safety guidelines issued by the Centers for Disease Control and Prevention or state and local governments.

On April 17, 2020, the Office of Management and Budget issued Memorandum [M-20-22](#), *Preserving the Resilience of the Federal Contracting Base in the Fight Against the Coronavirus Disease 2019 (COVID-19)*, which supplements Memorandum M-20-18 by addressing the implementation of Section 3610. Memorandum M-20-22 provides two guiding principles to help federal agencies determine how to implement Section 3610 to support the needs of their contractors and subcontractors:

- Support contractor resiliency while:
  - Carefully considering whether “reimbursing paid leave to keep the contractor in a ready state is in the best interest of the government for meeting current and future needs.”
  - Being “mindful of the challenges faced by small businesses.”
- Exercise good stewardship by:
  - Maintaining a focus on mission and evaluating the use of Section 3610 to promote contractor resiliency.
  - Following restrictions in Section 3610.
  - Working with contractors to secure documentation to support reimbursement and prevent duplication of payments.
  - Tracking the use of Section 3610.

## Responsible Office

The EPA’s Office of Acquisition Solutions, within the Office of Mission Support, is responsible for planning, awarding, and administering contracts for the Agency. The OAS issues and interprets acquisition regulations, administers training for contracting and program acquisition personnel, provides advice and oversight to regional procurement offices, and provides information technology improvements for acquisition.

## Scope and Methodology

We conducted this project from May to June 2020. We did not follow generally accepted government auditing standards or the Council of Inspectors General on Integrity and Efficiency’s *Quality Standards for Inspection and Evaluation*. However, we did follow the OIG’s quality control procedures for ensuring that the information in this report is accurate and supported. We looked at the EPA’s efforts to implement Section 3610 of the CARES Act from when the law was enacted on March 27, 2020, through June 9, 2020.

To answer the project objective, we reviewed actions taken and guidance issued by the OAS. We reviewed guidance related to Section 3610 of the CARES Act that the OAS provided to EPA contracting personnel and contractors to determine the contents of this guidance and whether this guidance was consistent with

the law. In addition, we interviewed the director for the Policy, Training, and Oversight Division within the OAS, and we reviewed whether the EPA is tracking paid leave expenses for approved contractors.

## What We Found

The EPA's OAS issued guidance regarding reimbursing contractors under Section 3610 of the CARES Act. On April 23, 2020, the OAS posted a mass notification to contractors on the beta.sam.gov website, which is "the official U.S. government website for people who make, receive, and manage federal awards." This mass notification alerted contractors to the EPA's supplemental instructions for Section 3610 reimbursements. In addition, the OAS posted a *Flash Notice*, dated April 30, 2020, for OAS contracting personnel on its internal SharePoint site. This notice outlined guidance related to Section 3610 reimbursements for contractors:

- Contractors seeking reimbursement under Section 3610 should use *Contractor Supplemental Invoice Instructions under the CARES Act Section 3610*.
- Three sets of documents are available for EPA contracting personnel to use to review and process reimbursements:
  - *Guidance for Contracting Officers (CO) to Implement Section 3610 of the CARES Act*, also known as the "Implementation Plan."
  - *Guidance for Contracting Officers Conducting Reimbursement Analyses Pursuant to Section 3610 of the CARES Act*.
  - Sample approval and denial letters.

On June 3, 2020, after consultation with the EPA's Office of General Counsel, the OAS posted a revised Implementation Plan on its internal SharePoint site clarifying that the CARES Act allows the Agency to:

[U]se any funds available to the Agency for the purpose of the procurement to reimburse contractors for workers' lost time from March 27, 2020 to September 30, 2020 if the contractor provided leave to its employees or subcontractors "to maintain a ready state, including to protect the life and safety of Government and contractor personnel." If a contract or task order is split-funded with more than one appropriation, idle labor may be reimbursed in accordance with the same percentage allocation between each appropriation account as in the original split-funding justification memo.

### ***EPA's Section 3610 Reimbursement Process***

The EPA is not required to reimburse contractors under Section 3610 of the CARES Act, nor does the Agency seek out contractors to reimburse. It is a contractor's responsibility to submit an invoice per the *Contractor Supplemental Invoice Instructions* if it is seeking relief under Section 3610. Contracting officers must get approval to reimburse contractors from the senior resource official of each relevant program office before approving invoices. The senior resource officials must determine whether funds are available and whether it is in the best interest of the government to reimburse contractors. According to the Policy, Training, and Oversight Division director, Congress has not provided any additional funds to the Agency to reimburse contractors under the Act. The director emphasized that reimbursements must come from current funds.

In April 2020, the OAS trained 223 contracting officers and contract specialists on the reimbursement process under Section 3610, including the Implementation Plan and other guidance that contracting officers must follow to implement Section 3610. The Implementation Plan addresses:

- Contractor eligibility for reimbursement.
- Contracts where telework has not been approved.
- Supporting documentation required for contractor invoices.
- Required senior resource official approval.
- Contract modifications.
- Processing and tracking of invoices.

Contracting officers must verify that contractors follow the *Contractor Supplemental Invoice Instructions*, which describes the information that contractors must provide before the EPA can consider reimbursing them under Section 3610, including:

- Written stipulations by the contractor identifying the employees and subcontractors that are unable to access federally approved work sites.
- Detailed payroll documentation demonstrating that the contractor has provided paid leave to its employees and subcontractors.
- Documentation of other federal COVID-19 relief, such as the Paycheck Protection Program, that has been received by the contractor, if applicable.
- Written stipulations that invoice charges for paid-leave labor costs of contractor employees and subcontractor workers do not exceed 40 hours per week and represent the lowest labor billing rate for the individuals identified in the contract.
- Signed certification by the contractor stating that the information and documentation provided is accurate.

In addition, contracting officers are required to notify, among others, the OAS Financial Analysis and Oversight Branch if they receive a contractor invoice for reimbursement under Section 3610. Contracting officers must analyze the submissions to determine whether contractors properly identified the charges, provided detailed payroll information, and verified that employees could not telework. According to the Policy, Training, and Oversight Division director, contracting officers and contracting officer's representatives in the program offices should follow the usual internal controls for reviewing contractor invoices.

As of June 1, 2020, the EPA had received one contractor invoice, valued at \$43,426, for reimbursement under Section 3610. However, the OAS deemed that the invoice was inadequate due to missing information and certifications. The OAS planned to inform the contractor that the EPA needs additional information and the contractor must correct the invoice before it can be processed.

## **Conclusion**

The OAS created and provided detailed guidance to EPA contracting personnel and contractors related to reimbursements under Section 3610 of the CARES Act. Two OAS-issued guidance documents—the

Implementation Plan and the *Contractor Supplemental Invoice Instructions*—specifically capture the purpose of and implementation steps for Section 3610. We did not find any evidence that the EPA’s guidance, as revised, was inconsistent with the statute.

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