

## Client Alert

### GSA Issues Class Deviation Regarding Implementation of Section 3610 of the CARES Act

April 28, 2020

On April 21, 2020, the General Services Administration (GSA) Office of Governmentwide Policy, issued [Class Deviation CD-2020-12](#), effective immediately, which sets forth implementation guidance for Section 3610 of the CARES Act and creates a new General Services Administration Acquisition Regulation (GSAR) contract clause.

Although GSA does not expect to use Section 3610 broadly to reimburse GSA contractors for paid leave, the class deviation recognizes that it is important for GSA to "establish clear direction" for assisted acquisitions and for contracts GSA establishes for other agencies to use. With respect to applicability, the class deviation makes clear that Section 3610 reimbursement relief may apply to task orders under indefinite-delivery vehicles, but that it does not apply to indefinite-delivery vehicles at the contract level and that Heads of Services may issue a determination indicating the programs to which Section 3610 does not apply. The deviation also provides direction for establishing reimbursement for paid leave according to contract type.

The contract clause allows contractors to request an equitable adjustment for reimbursable leave during the period of March 27, 2020 through September 30, 2020, "immediately after making the payment to the contractor's employee(s), or making the payment to the subcontractor that has already made the payment to the subcontractor's employee(s)." Contractors requesting reimbursement must provide the contracting officer with a representation that: (1) the request is only for reimbursable leave for applicable work, at the applicable rate; (2) the contractor will timely notify the contracting officer of the circumstances of receiving any covered credits that reduce the maximum reimbursement amount authorized by Section 3610; and (3) all information is true, accurate, complete, and correct. The clause reiterates that contractors are not allowed to retain any double reimbursements after the application of covered credits, and thus must repay "the Government the amount of the reimbursement up to the amount of the covered credits." The repayment owed to the Government is expressly characterized as an "overpayment" as the term is used in FAR 3.1003(a)(3). The clause also states that contracting officers, or authorized representatives, will have the right to examine and audit all pertinent records and affected contractor employees.

On Wednesday May 6, 2020 at 3 pm Eastern, the GSA's Office of Government-wide Policy, the Federal Acquisition Service and the Public Building Service will provide an informal off the record industry listening session to hear industry's reaction to the GSA's implementation of the Act including challenges and solutions related to COVID-19 activities. Interested parties can join via phone at 1 208-606-0509 PIN: 716 206 221#.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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