

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE
PAGE OF PAGES
1 1

2. AMENDMENT/MODIFICATION NO. 0100
3. EFFECTIVE DATE See Block 16C
4. REQUISITION/PURCHASE REQ. NO.
5. PROJECT NO. (If applicable)

6. ISSUED BY CODE 892332
7. ADMINISTERED BY (If other than Item 6) CODE 05002
NNSA M&O Contracting Branch
NA-APM-131
Albuquerque Complex
P.O. Box 5400
Albuquerque NM 87185-5400
NNSA Nevada Field OFC
NA-00-NV
P.O. Box 98518
Las Vegas NV 89193-8518

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)
Mission Support And Test Services LLC
Attn: Jeanette Matthews
PO Box 98521
M/S NLV019
Las Vegas NV 89193
9A. AMENDMENT OF SOLICITATION NO.
9B. DATED (SEE ITEM 11)
10A. MODIFICATION OF CONTRACT/ORDER NO.
DE-NA0003624
10B. DATED (SEE ITEM 13)
05/12/2017
CODE 080083514 FACILITY CODE

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS
 The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended. is not extended.
Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or electronic communication which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or electronic communication, provided each letter or electronic communication makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
D. OTHER (Specify type of modification and authority)
X Section 3610 of the Coronavirus Aid, Relief, & Economic Security Act (CARES Act) (Pub. L. No. 116-136)

E. IMPORTANT: Contractor is not is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)
The purpose of this modification is update Clause H-26, Paid Leave under Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to maintain employees and subcontractors in a ready state (April 2020), as set forth in Attachment 1 attached hereto.

Payment:
Period of Performance: 06/07/2017 to 11/30/2022

Except as provided herein, all terms and conditions of the document referenced in Item 9 A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)
16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)
Darby A. Dieterich
15B. CONTRACTOR/OFFEROR
15C. DATE SIGNED
16B. UNITED STATES OF AMERICA
16C. DATE SIGNED
03/16/2021
(Signature of person authorized to sign) (Signature of Contracting Officer)

In recognition of the extension of Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to December 18, 2020, Clause H-26 – *Paid leave under Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to maintain employees and subcontractors in a ready state (April 2020)*, is modified as follows:

Change the end date in Paragraph (a)(2) from “March 31, 2021” to “September 30, 2021”.

No other changes are made as a result of this modification. All other terms and conditions remain unchanged.

(END OF MODIFICATION)

**NNSA Coronavirus Aid, Relief, and Economic Security
(CARES) Act Guidance
Questions and Answers:**

1. **Question 1:** Does this paid leave guidance apply to craft construction workers?

Answer 1: Yes, this guidance applies to craft construction workers. If the employees are represented by unions, contractors should abide by collective bargaining agreements and applicable law.

2. **Question 2:** Does this Guidance apply to all tiers of subcontractors as well?

Answer 2: The guidance applies to all tiers of subcontractors. Subcontractors should be working with their prime contractor following the terms and conditions of their subcontract and their own company policies. That being said, Contracting Officers shall ensure that prime contractors are taking the aforementioned actions relating to on-site subcontract employees. They should, for example, ensure their subcontractor employees are telework capable to the maximum extent practicable.

3. **Question 3:** Does this Guidance apply to employees that have to stay home due to school closings, but cannot work from home?

Answer 3: The paid leave under this guidance is reserved for an employee that is not in a telework eligible position or is only able to perform part of their job remotely (e.g. training), as long as the employee remains healthy.

If an asymptomatic employee in a telework eligible position, needs to stay home to care for a child or other relative and can telework, the employee may telework, but may only charge for time worked. For time not worked, the employee is not eligible for weather and safety leave and shall take another form of leave appropriate for the circumstances in accordance with the Contractor's existing leave policy/program.

4. **Question 4:** Does this mean employees will not have to use their accumulated sick leave or paid time off (PTO)? Is this in addition?

Answer 4: The paid leave under this guidance is reserved for an employee that is not in a telework eligible position or is only able to perform part of their job remotely (e.g. training), as long as the employee remains healthy. The standard rules for sick leave or contractor equivalent still apply (i.e. if an employee is sick or taking care of a sick dependent, sick leave is appropriate and WSL does not apply).

5. **Question 5:** Does the paid leave under this guidance apply to employees that are considered high risk in accordance with the Center for Disease Control's (CDC) guidance, who are home and are not in a telework eligible position?

Answer 5: The CDC guidelines have determined that people 65+/with underlying conditions are at a higher risk of dying from COVID-19. Employees who fall under this category and are not in a telework eligible position are authorized WSL or contractor equivalent, as long as the employee remains healthy.

6. **Question 6:** When is this guidance effective?

Answer 6: This guidance is effective from January 31, 2020 until **September 30, 2021** for costs incurred to maintain employees and subcontractors in a ready state in accordance with the guidance.

7. **Question 7:** First, the COVID paid time guidance states that the leave is “available to employees who are unable to work due to COVID-19 related circumstances and cannot telework.” We believe this would include employees such as those who are sick with COVID-19, potentially exposed, or caregivers for family members with COVID-19 or children whose schools or daycares have been closed due to COVID-19 and are unable to work (when otherwise they may have been able to work telework or otherwise) so that they do not have to exhaust their personal PTO or find other leave options if they do not have PTO available.

Answer 7: WSL or contractor equivalent is reserved for an employee that is not in a telework eligible position or is only able to perform part of their job remotely (e.g. training), as long as the employee remains healthy.

The standard rules for sick leave or contractor equivalent still apply (i.e. if an employee is sick or taking care of a sick dependent, sick leave or contractor equivalent is appropriate and WSL does not apply).

If an asymptomatic employee needs to stay home to care for a child or other relative and can telework, the employee may telework, but may only charge for time worked. For time not worked, the employee shall take another form of leave appropriate for the circumstances in accordance with the Contractor’s existing leave policy/program.

8. **Question 8:** Part time employees meeting the WSL eligible requirements (see response #3 above) would be able to use this leave for up to their normally scheduled hours. Would Casuals be able to use this leave for any expected normally scheduled hours? For example, some tour guides may generally be scheduled to work one day per week.

Answer 8: This is a site specific issue that will have to be dealt with on a case by case basis.

9. **Question 9:** Also, there may be circumstances where individuals are able to telework only partial days (for example, they may only be able to perform part of their normal duties remotely). Would they be able to charge this paid leave for hours that they cannot telework on a partial-day basis? We believe this would be preferable to putting individuals on full-time paid leave.

Answer 9: An employee that is only able to perform part of their normal duties remotely, is eligible for WSL for the remainder of the work they cannot perform remotely. An employee in this position, should exhaust all duties he or she can perform remotely.

10. **Question 10:** Does the WSL leave include the employees that are CDC identified as high risk or only those that have been exposed and are quarantined? This would also include those that must stay home due to school closures.

Answer 10: WSL is reserved for employees that are not eligible or able to telework or are only able to perform part of their job remotely (e.g. training). The standard rules for sick leave or contractor equivalent still apply (i.e. if an employee is sick or taking care of a sick dependent, sick leave is appropriate and WSL does not apply).

If an asymptomatic employee needs to stay home to care for a child or other relative and can telework, the employee may telework, but may only charge for time worked. For time not worked, the employee shall take another form of leave appropriate for the circumstances in accordance with the Contractor's existing leave policy/program.

11. **Question 11:** The guidance provides for 40 hours leave per week. What if contractor employees are under a CBA or other employee work policy that includes different hours (e.g. some CBAs stipulate a 48 hour week)?

Answer 11: The reimbursement is limited to an average of 40 hours per week. Paid leave as a result of the COVID-19 national emergency will be reimbursed at the minimum applicable contract billing rates not to exceed an average of 40 hours per week. Eligible employees whose tour of duty is less than 40 hours per week will be reimbursed on a pro rata basis proportionate to their regular tour of duty not to exceed an average of 40 hours weekly.

12. **Question 12:** Can this administrative leave be used for employees under quarantine related to COVID19?

Answer 12: If an employee is directed to remain at home to quarantine to protect the health and safety of the workforce, this leave is applicable. This leave is not applicable to employees who choose to self-quarantine or who are able to telework.

13. **Question 13:** What does the Section 3610 mean by "a site that has been 'approved' by the Federal Government"?

Answer 13: The approved work site is the contractor's location and any other places of performance specifically identified in the contract. This includes any contractor or subcontractor facility at which contract administration services are performed in support of those contracts. Section 3610 states: "Such authorities shall apply only to a contractor whose employees or subcontractors cannot perform work on a site that has been approved by the Federal Government, including a federally-owned or leased facility or site, due to facility closures or other restrictions...." That is, the fact that work cannot be performed on site has been approved by the Federal Government due to facility closures or other restrictions.

14. **Question 14:** Many work sites remained open and available. However, what about contractor personnel that have childcare issues due to school closures, those on leave to care for themselves or others due to contracting COVID-19, or employees under quarantine because of actual or potential exposure?

Answer 14: 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. See answers to questions #3, 7, and 10 above for more detail regarding these specific situations. As established in Office of Management and Budget Memorandum M-20-18, Managing Federal Contract Performance Issues Associated with the Novel Coronavirus, dated March 20, 2020, contractors 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 supporting documentation. In seeking a determination of affected contractor status, a contractor must also identify any applicable credits it may be allowed under the CARES Act, Division G of Public Law 116127, or any other Act, and whether they have applied those credits to reduce reimbursements under this contract.

15. **Question 15:** Isn't paid leave an allowable cost under contracts anyway?

Answer 15: Some paid leave is an allowable cost under the cost principles of FAR 31.2, specifically FAR 31.205-6(m). However, it is likely contractors may not have an established provision in their compensation plans for granting leave for the specific purposes stated in Section 3610 of the CARES Act and, without such a provision, leave of that kind would normally not be an allowable cost.

Covered paid leave is limited to leave taken by employees who otherwise would be performing work on a site that has been approved for work by the Federal Government, including on a government-owned, government-leased, contractor-owned, or contractor-leased facility approved by the federal government for contract performance; but:

- 1) The work cannot be performed because such facilities have been closed or made practically inaccessible or inoperable, or other restrictions prevent performance of work at the facility or site as a result of the COVID-19 national emergency; and,
- 2) Paid leave is granted because the employee is unable to telework because their job duties cannot be performed remotely during public health emergency declared on January 31, 2020, for COVID-19.

16. **Question 16:** Should the costs of leave made allowable by Section 3610 be charged as direct or indirect?

Answer 16: Contractors should follow their established practices for identifying and recording direct and indirect costs and treat Section 3610 paid leave similarly. Identification of costs can be performed by any reasonable method as long as the result provides a sufficient audit trail and is based on a causal/beneficial relationship pursuant to contract terms. Coordination with the cognizant Contracting Officer (CO) is recommended to ensure consistency.

17. **Question 17:** Do Section 3610 reimbursable amounts need to be segregated and separately accumulated in contractor accounting records?

Answer 17: Costs covered by this section are limited to those that are incurred as a consequence of granting paid leave as a result of the COVID-19 national emergency and that would not be incurred in the normal course of the contractor's business. Costs of paid leave that would be incurred without regard to the existence of the COVID-19 national emergency remain subject to all other applicable provisions of FAR subparts 31.2, 31.3, 31.6, 31.7 and contract terms. In order to be allowable under this section, costs must be segregated and identifiable in the contractor's accounting records so that compliance with all terms of this section can be reasonably ascertained. Segregation and identification of costs can be performed by any reasonable method as long as the results provide a sufficient audit trail. In addition, the contractor must specify why work could not be performed remotely.

18. **Question 18:** Isn't the agency required to reimburse these costs?

Answer 18: No, Section 3610 is permissive, not mandatory. Section 3610 does not compel or even encourage reimbursement of paid costs. Instead, it simply authorizes payment of these costs so that agencies may use their discretion to make reimbursements that are in the best interest of the government. Agency decisions to reimburse these costs should take into account the Congressional intent to reduce the impacts of the COVID-19 pandemic on the Industrial Base and small business entities supporting the DOE, but also the eligibility requirements, availability and application of other relief provisions before seeking reimbursement under this contract, FAR Part 31 allowability considerations, and fiscal constraints, and mission impacts.

19. **Question 19:** How does Section 3610 provide relief for contracts and contract line item numbers (CLINs) that are other than cost-reimbursement type?

Answer 19: Section 3610 does not provide specific relief to any contract; instead it authorizes reimbursement for certain costs, under certain conditions, that are related to COVID-19. Fixed-price contracts and CLINS remain fixed-price. Section 3610 provides authority for agencies to "modify the terms of a contact" to reimburse the described costs.

20. **Question 20:** What about commercial item contracts?

Answer 20: Section 3610 does not prohibit reimbursement of COVID-19 paid leave costs under contracts for commercial items. However, Section 3610 is permissive and not mandatory. There will be more guidance forthcoming on application of 3610 to commercial item contracts.

21. **Question 21:** May Contracting Officers add CLINs to existing fixed-price contracts to reimburse contractors for this cost?

Answer 21: Yes, contracting officers can implement an equitable adjustment of fixed price type contracts by the addition of a unique CLIN.

22. **Question 22:** Will profit or fee be reimbursed under this deviation?

Answer 22: No. Section 3610 only authorizes reimbursement of “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....”

23. **Question 23:** Section 3610 requires reimbursement to be reduced by the amount of credit a contractor is allowed within division G of Public Law 116–127 and any applicable credits a contractor is allowed under the CARES Act. What about any State or local benefits that a contractor is offered and accepts?

Answer 23: There may be available State and local programs to mitigate impacts to industry from COVID-19. Contractors should disclose any State and local reimbursement received, and any for which they were eligible but did not apply, for employee leave and should not request duplicate reimbursements from the Federal Government where other bases for relief have been accepted. Contracting officers should take into consideration any relief for which a contractor was eligible but did not apply when evaluating the reasonableness and allocability of contractor claims for reimbursement under the contract. Costs made allowable by this section should generally be reduced by the amount the contractor is eligible to receive under any other Federal payment, allowance, or tax or other credit allowed by law that is specifically identifiable with the public health emergency declared on January 31, 2020, for COVID–19, such as the tax credit allowed by division G of Public Law 116–127.

24. **Question 24:** What is meant by maintaining the contractor in a “ready state?”

Answer 24: Ready state refers to a contractor’s ability to mobilize and resume performance in a timely manner.