



April 16, 2020

(Sent Via E-Mail to All PSO Contractor Corporate POCs and Contract Managers)

SUBJECT: Section 3610 of CARES Act

ENCLOSURE (1): DHS Chief Procurement Officer Message for the DHS Contractor Workforce for Implementing CARES ACT Section 3610 Dated April 16, 2020

Dear Industry Partners:

As you are all keenly aware, Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), passed by Congress, offers relief specifically targeted to federal contractors whose employees (1) cannot perform work on a “site that has been approved by the Federal Government” during the COVID-19 public health emergency due to facility closures or other restrictions and (2) cannot telework because their job duties cannot be performed remotely. Section 3610 of the CARES Act authorizes agencies to use any available funds to modify affected contracts – without consideration – to reimburse paid leave, including sick leave, that a contractor provides to keep its employees or subcontractors in a ready state. Many of you have been reaching out to your cognizant Contracting Officers (COs) or even myself in regards to whether FPS will be implementing Section 3610 of the CARES Act under your impacted contracts for Protective Security Officer Services (PSO) and how quickly contracts will be modified to implement CARES. FPS agrees with our PSO vendors that Section 3610 of the CARES Act applies to FPS contracts for PSO services.

The purpose of this communication is to provide you all with some transparency into the steps DHS and FPS have taken so far to begin moving towards implementing Section 3610 under your contracts. First, the DHS Chief Procurement Officer (CPO) issued a memorandum titled “Contract Performance Impacts due to COVID-19 and the implementation of Sec 3610 of the Cares Act.” This memo was issued on April 11, 2020 and provides guidance on managing contract performance changes due to the novel Coronavirus (COVID-19) and how contracting officers may implement Section 3610 of the CARES Act. Second, the FPS Acquisition Division has taken action to gather data from all of you regarding the impact to your operations due to COVID 19. As you recall, FPS AD sent out a detailed correspondence and requested that each of our vendors provide specific data to include percentage of reductions in service (if any), impacts to PSO workforce and readiness and any requests made for assistance, either via Tax Credits or SBA Loans, etc. Third, FPS AD has been analyzing the data you have all submitted and reporting those results to FPS HQ to enable FPS as a whole to make an informed decision regarding a way forward, to include identifying funding, to begin modifying contracts for PSO services to incorporate relief through the CARES Act. Our next step towards implementation is to put each of you on notice that you may begin submitting requests under each impacted contract where your

employees or subcontractors cannot perform work on a site that has been approved by the Federal Government due to facility closures or other restriction and who cannot telework because their job duties cannot be performed remotely during the public health emergency declared on January 31, 2020. The requests must be submitted on a contract by contract basis and your requests are subject to availability of funding. The request must include the following information:

- Include in your Request for Equitable Adjustment (REA) that you are requesting CARES Act relief. Include a description of the actions the contractor has taken to continue performing work under the contract, the circumstances that made it necessary to grant employees leave, an explanation of how the leave served to keep employees in a ready state. The request should include specific information on the reduction of hours such as building and location.
- Your proposal should include a ceiling amount that is no more than the average labor rate (no profit but all indirect costs) x the number of employees at that rate x the number of weeks you intend to provide leave for the employee due to the closure of the building. Sufficient supporting documentation should include PSO name, but no PII information, to substantiate the total hours of paid leave, including sick leave. As a reminder, Section 3610 limits reimbursement of paid leave to an average of 40 hours per week.
- Total estimated amount you will incur to maintain a state of readiness: From the date of the reductions to your contracts through September 30, 2020.
- Provide a statement of all the CARES Act benefits you intend to seek or a statement that you don't intend to seek any other relief under the CARES Act including any tax benefits and loans.
- We anticipate setting up a separate Contract Line Item Number (CLIN) under your contract for COVID-19 so invoices can be submitted and tracked. We will likely request payroll records in order to approve the invoices and make payments, so you will need to track your actual costs paid. At no time should your costs exceed the Pre-COVID-19 ceiling hours at an affected building.
- Also, based on CPO guidance, an audit to verify the actual costs paid and the amount of benefits received under the CARES Act may be conducted before the contract/task order is closed out. At that time, if you are deemed to be not entitled to the relief under 3610, we will send a demand letter for the repayment and cannot close the contract until it is resolved.

FPS certainly acknowledges and appreciates the critical role that our PSOs and PSO Vendors play in supporting the Federal Government and protecting our federal facilities. FPS is committed to ensuring the availability of that support going forward and providing relief to you during these unprecedented times. In closing, I would like to share the attached DHS Chief Procurement Officer Message for the DHS Contractor Workforce for Implementing CARES ACT Section 3610 Dated April 16, 2020 and thank you for your service to the Department of Homeland Security.

Sincerely,  
Dan O'Sullivan  
Director, FPS Acquisition Division