



Date: April 7, 2020
To: Submitted via email (osd.dfars@mail.mil)
Re: Early Input regarding Section 3610 of the Coronavirus Aid, Relief and Economic Security (CARES) Act

Womble Bond Dickinson (US) LLP

1200 Nineteenth Street, NW
Suite 500
Washington, DC 20036

t: 202.467.6900
f: 202.467.6910

Gary J. Campbell
Direct Dial: 202.857.4546
Direct Fax: 202.261.0043
E-mail: gary.campbell@wbd-us.com

Womble Bond Dickinson (US) LLP, on behalf of a client that provides private security services in high-threat overseas environments for the U.S. Department of Defense (“DoD”), submits the following input regarding implementation of Section 3610 of the CARES Act. The client asked for its name to remain confidential due to operational security concerns.

Current DoD Contracts

Our client currently performs private security services at various U.S. Army and U.S. SOCOM installations of varying sizes throughout the country of Afghanistan. It has over 975 personnel working to ensure the safety and security of both U.S. military personnel and other contractors working in Afghanistan in support of the U.S. mission. Its personnel are largely former members of the armed services who work on 6-month rotations that require them to travel in and out of Afghanistan.

Current Situation

As a result of the COVID-19 pandemic, movement into, out of, and within Afghanistan is severely restricted, both by DoD and by other nations, and there is little to no availability of MILAIR or commercial air flights. As a result, our client’s personnel are unable to depart Afghanistan, and the client is unable to deploy personnel into Afghanistan who, for example, were on rotational leave in the U.S. when travel restrictions were put in place. If our client is unable to rotate personnel, it is likely that once the travel restrictions are lifted, a growing number of our client’s personnel currently in Afghanistan will be eligible to return home or will request to return home. This could severely impact our client’s ability to staff security positions at military installations, and, due to military rotation issues, the U.S. military may be unable to cover these security shortages. Even if they are, this would take U.S. military members away from performing critical functions in order to perform basic security. At present, our client’s contracts with DoD do not permit a “reserve” of personnel prepared to deploy on short notice and address any staffing issues. Rather, they must recruit and send personnel to the Conus Replacement Center (“CRC”) in Fort Bliss, Texas (subject to a limit on numbers) to complete a week of training and then wait for available space to fly MILAIR into Afghanistan. As it stands now, our client very likely will be significantly delayed in a return to full staffing.



Recommendation

Our client is actively working with its DoD Contracting Officers both in the U.S. and in Afghanistan, keeping them informed of key developments and impacts to security. Our client proposed the creation of a “ready reserve” of qualified security personnel who could deploy into Afghanistan on short notice to mitigate the impact of staff shortages on security for U.S. military members. While the Contracting Officers have shown interest in this concept, it is not clear at present whether the contracts can properly be modified to permit this approach. Therefore, our client recommends that DoD’s implementation of Section 3610 of the CARES Act include the following:

1. Further define “*facility closures or other restrictions*” as stated in Section 3610 to include the inability of contractor personnel to return to a DoD facility in Afghanistan due to (a) inability to travel via MILAIR or commercial air to the work location, (b) mandatory quarantines, or (c) other restrictions including the inability to obtain required immigration documents due to government office closures.
2. Provide authority for a Contracting Officer to modify the terms of a contract, including fixed-price contracts (for security services only if necessary), in order to permit the contractor to maintain a designated number of qualified additional personnel who will receive paid leave in accordance with Section 3610 in order to keep them in a “*ready state*” to quickly deploy to Afghanistan once restrictions are lifted.
3. Clarify that “*minimum applicable contract billing rates*” as stated in Section 3610 shall mean, for purposes of a fixed price contract, the rate that a Contracting Officer determines to be fair and reasonable based on the terms of the existing contract.

We hope that you will consider accepting these recommendations to enable our client to continue to work with its DoD Contracting Officers to develop a plan that will ensure the safety and security of our U.S. military members deployed in Afghanistan.