DOJ PROCUREMENT ADVISORY

August 2009 #2009-02

New Service Contract Act Health and Welfare Fringe Benefit Change

This message is sent on behalf of Lesley Field, the Acting Administrator and Deputy Administrator of the Office of Federal Procurement Policy.

In accordance with 29 CFR, Section 4.52, the prevailing health and welfare fringe benefits issued under the McNamara-O'Hara Service Contract Act (SCA) changed, and effective June 1, 2009, the new SCA health and welfare benefit will be $3.35 per hour. See the attached document for details and for the wage determinations reflecting the new benefit rates, visit the Wage Determinations On-Line website at www.wdol.gov.

PPRG/JMD

Attachment

U.S. Department of Labor

MAY 1 8 2009

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

ALL AGENCY MEMORANDUM NUMBER -206

MEMORANDUM FOR: ALL CONTRACTING AGENCIES OF THE FEDERAL GOVERNMENT AND THE DISTRICT OF COLUMBIA

FROM: JOHN L. McKEON
Deputy Administrator

SUBJECT: Service Contract Act Health and Welfare Fringe Benefit Changes

In accordance with 29 C.F.R. Section 4.52, the prevailing health and welfare fringe benefits issued under the McNamara-O'Hara Service Contract Act (SCA) will be increased on June 1, 2009. As prescribed by the regulations, the new benefit rate is derived from the latest Bureau of Labor Statistics Employment Cost Index (ECI) summary of Employer Cost for Employee Compensation. Effective June 1, 2009, the new SCA health and welfare benefit will be $3.35 per hour.

Based on the regulations adopted in 1996, SCA wage determinations (WDs) have contained two different health and welfare fringe benefit levels: a "low" level benefit and a "high" level benefit. The low level benefit was updated every year on June 1, based upon the latest BLS data, and the high level benefit was grandfathered at $2.56 per hour. In addition to having different benefit levels, the high and low health and welfare benefits continue to have different methods for determining compliance. Compliance with the low level benefit was determined on an employee-by-employee basis whereas compliance with the high level benefit was determined based upon the contractor's average fringe benefit cost for all service employees working on the contract.

In 2004, when the BLS publication of Employer Costs for Employee Compensation indicated that the low benefit rate was about to exceed the grandfathered high benefit rate of $2.56 per hour, the Wage and Hour Division announced (All Agency Memorandum Number 197) that it would increase the fringe benefit rate for all wage determinations, but would retain the two different methods for determining compliance. That policy will be continued again this year. Effective June 1, 2009, the employee-by-employee benefit will be $3.35 per hour, or $134.00 per week, or $580.66 per month. In addition, effective June 1, 2009, the average cost fringe benefit rate will also be $3.35 per hour. Consistent with the policy established in 1996 and continued since 2004, the average cost fringe benefit wage determination will be issued only for those contracts where the formerly grandfathered "high" benefit rate would have applied.

Solicitation/Contracts Affected

All invitation for bids opened, or other service contracts awarded on or after June 1, 2009, must include an updated SCA WD issued in accordance with the regulatory health and welfare fringe benefit determination methodology. Contracting agencies may make pen and ink changes to their current WDs received for contracts beginning on or after June 1, 2009, and for which the updated health and welfare rates were not included. It is not required that contracting agencies request a revised WD for a health and welfare rate change. Revised WDs reflecting the new benefit rates will be available at the Wage Determination On-Line website (www.wdol.gov) shortly after June 1, 2009.

Wage Determination for the State of Hawaii

Under Section 2(a)(2) of the SCA, fringe benefit payments that are required by state law may not be used to satisfy the employer's fringe benefit obligations. The SCA WDs have addressed this issue in the past by excluding the health insurance portion.

Consistent with past practice, and in recognition of the fact that Hawaii law requires most employers to provide health care coverage for most employees, the SCA WDs for Hawaii will continue to exclude the health insurance portion on the benefits for all employees on whose behalf the employer provides benefits pursuant to the Health Care Act. As to those employers not required to make, and which in fact do not make, contributions for certain employees under Hawaii law, then the reduced fringe benefit level is not appropriate for these employers.

Therefore, effective June 1, 2009, the SCA health and welfare fringe benefits level for Hawaii will be $1.40 per hour, or $56.00 per week, or $242.66 per month for all employees on whose behalf the contractor provides health care benefits pursuant to the Hawaii Health Care Act. For those employees not receiving mandated health care benefits, the new health and welfare amount will be $3.35 per hour.

The grandfathered average cost fringe benefit determinations for Hawaii currently provide for payment costing an average of $1.64 per hour. Since this rate is still above the new $1.40 per hour rate for Hawaii, the current $1.64 average cost fringe benefit level for Hawaii will continue to be grandfathered.