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

May 24, 2004

ALL AGENCY MEMORANDUM NUMBER 197

TO: All Contracting Agencies of the Federal Government and the District of Columbia

FROM: Tammy D. McCutchen
Administrator

SUBJECT: Service Contract Act Health and Welfare Fringe Benefit Changes

In accordance with the requirements of Section 4.52 of Regulations, 29 CFR Part 4, the prevailing health and welfare fringe benefits issued under the McNamara-O'Hara Service Contract Act (SCA) will increase on June 1, 2004. As prescribed by the Regulations the new benefit rate is derived from the latest Bureau of Labor Statistics Employment Cost Index (ECI) publication of Employer Costs for Employee Compensation.

Based on the regulations adopted in 1996, SCA wage determinations have contained two different health and welfare fringe benefit levels -- a "low" level benefit and a "high" level benefit. The low level benefit has been updated every year on June 1, based upon the latest BLS data, and the high level benefit has been grandfathered at $2.56 per hour. Each benefit level has its own method for determining compliance with the fringe benefit requirements of the SCA. Compliance with the low level benefit is determined on an employee-by-employee basis whereas compliance with the high level benefit is determined based on the contractor's average fringe benefit cost for all service employees working on the contract.

Based upon the latest BLS publication of Employer Costs for Employee Compensation, published on February 26, the low level benefit will be $2.59 per hour or $103.60 per week or $448.93 per month, effective June 1, 2004. The SCA regulations also state that the low level benefit rate will supercede the high level benefit rate; however, the regulations do not state that the average cost method of compliance will be eliminated. Therefore, on June 1, 2004 the average cost fringe benefit rate also will be $2.59 per hour. Consistent with the policy established in 1996, the average cost fringe benefit wage determinations will be issued only for those contracts where the formerly grandfathered "high" benefit rate would have applied.

Over the course of the next year, the Wage and Hour Division will solicit input from SCA stakeholders to evaluate whether regulatory changes are warranted in the methods for determining compliance with the health and welfare provisions of SCA wage determinations. In the meantime, however, the status quo will be maintained and the average cost will continue to apply to those contracts that previously had the grandfathered high fringe benefit rate determinations.

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Solicitation/Contracts Affected

All Invitations for Bids opened, or other service contracts awarded on or after June 1, 2004 must include an updated SCA wage determinations (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 WD received for contracts beginning on or after June 1, 2004 and for which the updated health and welfare rates were not included. It is not required that contracting agencies request a revised WD for only a health and welfare rate change.

Wage Determinations for the State of Hawaii

Under Section 2(a) (2) of the Service Contract Act, fringe benefit payments that are required by state law may not be used to satisfy the employer's fringe benefit obligations. In Hawaii, most employers are required, by law, to provide health insurance coverage for their employees. Therefore, employer contributions that are made to satisfy the employer's obligations under the Hawaii mandated prepaid Health Care Act may not be credited toward meeting the contractor's obligations under SCA. The SCA WD's address this issue by excluding the health insurance portion from the benefit rate. Currently, most Hawaii WDs specify a health and welfare benefit amount of $1.01 per hour.

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

Therefore, effective June 1, 2004 the new SCA health and welfare fringe benefits level for Hawaii will be $1.09 per hour, or $43.60 per week, or $188.93 per month for all employees on whose behalf the contractor provides health care benefits pursuant to the Hawaii Health Care Act. For those employees who are not receiving mandated health care benefits, the new health and welfare amount rate will be $2.59 per hour.

The grandfathered average cost fringe benefit determinations for Hawaii currently provide for payments costing an average $1.64 per hour. Since this rate is still above the new $1.09 per hour rate for Hawaii, the current $1.64 average cost fringe benefit level for Hawaii will continue to be grandfathered.