



MAY 22 1997

MEMORANDUM NO. 188

TO: ALL CONTRACTING AGENCIES OF THE FEDERAL GOVERNMENT AND
CONTRACTING AGENCIES OF THE DISTRICT OF COLUMBIA

FROM: 
JOHN R. FRASER
ACTING ADMINISTRATOR

SUBJECT: Service Contract Act Health and Welfare Fringe Benefit Changes

On December 30, 1996, the Department of Labor (the Department) published final regulations (61 FR 68647) establishing a new methodology for determining prevailing health and welfare fringe benefits under the McNamara-O'Hara Service Contract Act (SCA). The regulations are effective on June 1, 1997. A copy of the **FEDERAL REGISTER** notice is attached to this memorandum.

Under the new methodology, SCA wage determinations (WDs) will continue to specify vacation and holiday benefits based on data showing the benefits prevailing in the locality. The WDs will also specify a minimum rate for all other benefits (e.g., pension, health insurance). This rate will be a single nationwide fringe benefit rate applicable to all occupations and localities based upon the average employer costs per hour worked for all other benefits (excluding holidays, vacations, and benefits otherwise required by law). The single benefit rate is based on the sum of the benefits contained in the Bureau of Labor Statistics, Employment Cost Index (ECI).

In order to ease the transition from the current two tier (high and low) rate structure to the new single rate methodology, the regulations provide for a four-year "phase-in" period. **Beginning June 1, 1997, the new single benefit rate will be \$1.16 per hour.** The new single benefit rate equates to one-quarter of the difference between the current "insurance" (low) rate of \$.90 and the current all-industry rate of \$1.91. On June 1, 1998, this rate will be increased by one-third of the difference between \$1.16 and the new all-industry rate as computed by ECI. On June 1, 1999, the rate will be increased by one-half of the difference between the rate in the second year and the new ECI rate. On June 1, 2000, when the new methodology is fully implemented, the rate will be the ECI all-industry rate.

The Department will "grandfather" the current "total benefit" (high) rate until the new single benefit rate equals or exceeds \$2.56 per hour. This grandfathered rate will apply to those contracts which currently are subject to the "total benefit" (high) level, and to future solicitations for renewal of those contracts. The current "total benefit" (high) rate will not be applied to new contracts for services.

Required Agency Action

All Invitation for Bids opened, or other service contracts awarded on or after June 1, 1997, must include an SCA WD issued in accordance with the new regulatory methodology. In order to facilitate processing of solicitations that currently contain WDs with the \$.90 per hour benefit level, contracting agencies may make pen and ink changes to effect the fringe benefit rate increases on the WDs that have been issued for the procurement rather than await receipt of a revised WD with the new fringe benefit rate.

Contractor Compliance with the New and "Grandfathered" Benefit Rates

The new \$1.16 fringe benefit rate will be applied on a per employee, per hour basis in the same manner as the old \$.90 rate. The average cost concept (29 CFR Part 4.175(b)) will continue to be applicable to all "grandfathered" WDs with the \$2.56 per hour benefit rate.

Exceptions

Variance procedures

The regulations (29 CFR, Part 4.52(e)) provide a procedure for a variation from the new health and welfare methodology. Such variations will be considered only where the contracting agency demonstrates that because of the special circumstances of the particular industry, the variation is necessary and proper in the public interest or to avoid the serious impairment of the conduct of government business, and is in accordance with the remedial purpose of SCA to protect prevailing labor standards.

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 state 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 pre-paid Health Care Act may not be credited toward meeting the contractor's obligations under SCA. The SCA WDs have addressed this issue in the past by excluding the health insurance portion. Currently, most Hawaii WDs specify a health and welfare benefit amount of \$.055 per hour.

Consistent with past practices, and in recognition of the fact that Hawaii law requires employers to provide health benefit coverage for most employees, SCA WDs for Hawaii will continue to exclude the health insurance portion. The new SCA benefit level for Hawaii is based on the sum of the benefits contained in the ECI data excluding vacation, holiday, and health insurance for all employees in private industry. The new Hawaii benefit level will be phased-in in the same manner as all other benefits. **Effective June 1, 1997, the new SCA fringe benefit rate for Hawaii will be \$.28 per hour.**

Attachment