

MANAGEMENT MEMO

NUMBER:	01-07
(RESCINDS MM NO. 00-07)	
DATE ISSUED:	May 17, 2001
EXPIRES:	No Expiration
ISSUING AGENCY:	Department of General Services

SUBJECT:

Implementation of Required Employee Benefits in Specified Personal Services Contracts

REFERENCES:

EMERGENCY REGULATIONS (CALIF. CODE OF REGULATIONS TITLE 2, DIVISION 2, CHAPTER 3, SECTIONS 1896.300-1896.370); GOVERNMENT CODE SECTION 19134

This Management Memo rescinds and replaces Management Memo No. 00-07 issued on August 31, 2000, regarding Implementation of Required Employee Benefits in Specified Personal Services Contracts.

AB 674, effective September 29, 2000, enacted revisions to Government Code section 19134. Section 19134 requires provision for health, dental and vision benefits in certain types of personal services contracts let by the State.

Specifically, Government Code section 19134 (as revised by AB674) provides:

- (a) *Personal services contracts entered into by a state agency in accordance with Section 19130 for persons providing janitorial and housekeeping services, custodians, food service workers, laundry workers, window cleaners, and security guard services shall include provisions for employee benefits that are valued at least 85 percent of the state employer cost of benefits provided to state employees for performing similar duties.*
- (b) *For purposes of this section, "benefits" includes "health, dental, and vision benefits."*
- (c) (1) *The Department of Personnel Administration shall establish annually the state employer benefit costs for workers covered pursuant to this section.*
(2) *Benefit costs shall be established using rates based on single employee, employee plus one dependent, and employee plus two or more dependents, or the costs may be based on a blended rate, subject to the determination of the Department of Personnel Administration.*
- (d) *In lieu of providing actual benefits, contractors may comply with this section by a cash payment to employees equal to the applicable determination under subdivision (c).*
- (e) *Failure to provide benefits or cash-in-lieu to employees as required under this section shall be deemed to be a material breach for any contract for personal services covered by this section.*
- (f) *The Department of General Services and the Department of Personnel Administration may adopt guidelines and regulations to implement the requirements of this section.*
- (g) *This section applies to all contracts exceeding 90 days.*

The Department of General Services adopted emergency regulations effective January 1, 2001, to facilitate implementation of Government Code section 19134 (see Title 2, Division 2, Chapter 3, Sections 1896.300-1896.370). The emergency regulations were readopted with minor revisions effective April 30, 2001. The regulations can be viewed at the Department of General Services Office of Legal Services' website (www.dgs.ca.gov/ols).

The current applicable hourly benefit rates are posted at the Department of Personnel Administration website at www.dpa.ca.gov/benefits/general/contractors.shtm.

A. Application of Government Code 19134

1. This new benefit requirement applies to all contracts for the types of services identified in section 19134, above (whether based on Government Code section 19130(a) or 19130(b) justification). The

benefit requirement applies to employees who actually perform the types of duties identified in section 19134. It does not apply to personnel who perform solely supervisory or administrative support roles. (Note: reference to the "site" of Qualifying Contract services in section 1896.300(b)(1) of the DGS regulations is intended to identify employees actually performing covered services, as compared with administrative or supervisory personnel. "Site" does not necessarily mean at a state facility. Employees performing covered services at a contractor's site may also be covered, as long as they are providing services, not products.)

2. Section 19134 does not apply where the above-listed services are merely incidental to a contract.
3. The benefit requirement applies to all contracts awarded after July 10, 2000, which are for a term exceeding 90 days.

B. Timing of Implementation

Date Contract Entered	Date Contract Expires	Action Required
Prior to July 10, 2000	Prior to July 1, 2001	None
Prior to July 10, 2000	On or after July 1, 2001 (by its term or per renewal/extension)	Terminate and rebid <u>or</u> Amend
On or after July 10, 2000	Prior to July 1, 2001	Terminate and rebid <u>or</u> Amend
On or after July 10, 2000	On or after July 1, 2001 (by its term or per renewal/extension)	Terminate and rebid <u>or</u> Amend

1. Contracts awarded after July 10, 2000, must contain provisions for 19134 benefits. Agencies that have covered contracts executed after July 10, 2000, which do not yet contain 19134 benefits must either:
 - a. Terminate the contract(s) and rebid so as to provide for inclusion of the required benefits; or
 - b. Amend the contract(s) to include the required benefits

Prior to terminating a contract, agencies should take into consideration the contractor's expectation in performing through the full term of the contract, the potential termination costs, and the impact on the agency's internal contracting processes.

Amendments to existing contracts are authorized via a blanket sole source approval from the Department of General Services (approved March 15, 2001). State agencies amending existing contracts should reference this sole source approval in their Standard 15 (215) transmittal forms.

2. Contracts awarded prior to July 10, 2000, that will remain in effect beyond July 1, 2001 (based on the original term, renewal, or extension) shall, as a matter of policy, also provide for section 19134 benefits. This may be accomplished either by terminating and rebidding or by contract amendment.
3. Contracts awarded prior to July 10, 2000, that will expire prior to July 1, 2001, may be, but are not required to be, rebid or amended.
4. Agencies with master contracts shall determine pursuant to the foregoing guidelines whether to rebid or amend the master contracts to provide for inclusion of benefits. Agencies with subscription agreements to master contracts shall terminate and re-subscribe or amend their subscription agreements accordingly.

5. Amendments providing for the initial inclusion of benefits to existing contracts shall be effective the date the amendment is executed, but in no event later than July 1, 2001. Amendments executed after July 1, 2001 shall implement benefits retroactive to July 1, 2001. Contract amendments must contain the same essential implementing language that is required for initial contracts (see below).

C. Benefits

1. Government Code section 19134 requires payment of health, dental, and vision benefits valued at at least 85 percent of comparable benefits provided by the state. Based upon figures provided by the Department of Personnel Administration (DPA), the rates required by section 19134 have been determined as of February 1, 2001, to be as follows:

Three-tiered rates:

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| a. Single party: | \$ 1.05 per hour |
| b. Single party plus one dependent: | \$ 2.01 per hour |
| c. Single party plus two or more dependents: | \$ 2.66 per hour |

Blended rate: \$ 2.05 per hour

These rates represent 85 percent of the total reimbursed state cost for health, dental, and vision benefits for employees performing services similar to those covered by Government Code section 19134. The choice between use of three-tiered or blended rates rests with the contracting agency.

Before including benefit provisions in a contract or bid, agencies should verify the currently applicable rates at the DPA website: www.dpa.ca.gov/benefits/general/contractors/shtm. DPA will update and post applicable rates on its website on or before February 1 of each year. Rate changes posted by DPA after issuance of a bid package but prior to the bid due date should be listed in a solicitation addendum. Resulting contracts should include an escalation clause to allow for adjustments of benefit rates based on DPA's annual posting. Rate changes occurring during a contract term should be implemented by a contract amendment with an effective date retroactive to the date the rate change was posted by DPA.

2. In lieu of benefits, a contractor may pay employees cash payments equal to the applicable benefit rate(s) under the contract. A contractor may also provide a combination of benefits and cash-in-lieu payments which together equal the required amount.
3. Contractors electing to provide actual benefits (vs. cash in lieu) to their employees must provide the contracting agency evidence of coverage prior to execution of the contract.
4. Benefit/cash-in-lieu rates are calculated on a per-hour basis. Employees covered by section 19134 shall be paid applicable benefits or cash-in-lieu payments for each hour of service they perform on the covered state contract (excluding overtime). There is no requirement that such employees work a specified minimum number of hours in order to qualify for benefits or cash-in-lieu payments. Pursuant to DGS regulations, employee names, hours worked, and benefits/cash-in-lieu received must be documented by contractors in monthly reports provided to the contracting agency.
5. For contracts using the three-tiered rates: If a contractor's employee's number of dependents changes during the course of the contract term (e.g., from single to family), the contractor may include a request for reimbursement at the appropriate new tiered rate and document the change in the required monthly reports. State agencies shall reimburse contractors at the adjusted rates, absent any indication of misrepresentation or fraud by the contractor.

D. Agency funding

The Budget Act of 2000 contains funding for the increased costs to state agencies for providing the required benefits or cash-in-lieu payments specified by section 19134. The Department of Finance's Budget Letter 01-06 provides instructions for agencies to obtain funding for any necessary and related increased costs (not to include an agency's or contractor's administrative costs). Applications for funding should be made within two weeks of contract (or amendment) execution and approval.

Agencies planning to seek reimbursement from the Department of Finance pursuant to Budget Letter 01-06 for the added cost of section 19134 benefits should ensure their contractor's proposal and/or contract documents include sufficient detail regarding the portion of contract dollars allocated for section 19134 benefits. This information will serve as a basis for the amount claimed by the agency in its reimbursement request.

E. Bid Documents and Resulting Contracts

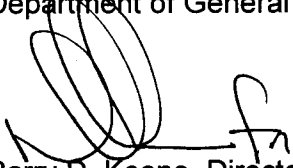
Bid documents, bidder proposals, and contracts subject to section 19134 must include specific provisions addressing the applicability of section 19134. The required provisions are described in the DGS regulations cited above, and are further explained below.

1. Bid documents
 - a. **Section 19134 benefits may be included as part of the bidders' cost bid or may be evaluated separately as a minimum qualifications-type requirement.**
 - b. Where section 19134 benefits will be included as part of the cost bid, state agencies may, in order to create a level playing field for bidders, have bidders use a blended rate for purposes of their bids, regardless of whether the resulting contract will use the blended or three-tiered rates. (This way bidders with employees who are single will not have an advantage over bidders with employees who have dependents.)
 - c. All bid documents should also provide:
 - 1) Notice to bidders of their obligations under section 19134
 - 2) Notice to bidders regarding whether the blended or the three-tiered rates apply (this is the state agency's choice)
 - 3) Notice to bidders regarding the currently applicable hourly benefit rate(s) (either blended or three-tiered) as posted on DPA's website
2. Bidders' Proposals
 - a. Bidders' proposals must include a commitment to comply with section 19134 and the applicable regulations
 - b. Bidders' proposals should include the total cost of providing benefits under section 19134 for the term of the contract (based on the number of employee hours to be worked times the applicable hourly rate(s) identified in the bid documents)
3. Contracts (including amendments) providing for section 19134 benefits must include all of the following:
 - a. A description of the contractor's obligations under section 19134
 - b. The applicable benefit rate(s)
 - c. If the contract will extend beyond February 1, an escalation clause allowing for change in rates as posted by DPA. (Rate changes shall be accomplished through a contract amendment, with an effective date retroactive to the date the rate change(s) were published by DPA.)
 - d. Monthly reporting requirements
 - e. Notice that failure to comply with section 19134 is a material breach that could result in immediate contract termination
 - f. Audit provisions

- g. As noted above, agencies planning to seek reimbursement of section 19134 benefit costs from the Department of Finance pursuant to Budget Letter 01-06 should also include in their contracts or amendments a breakdown of the dollar amount apportioned under the contract to pay for section 19134 benefits. This will serve as the basis for the amount of the agency's reimbursement request.

For further details regarding these requirements, see the Department of General Services' regulations cited above.

Questions regarding implementation of Government Code section 19134 may be addressed to the Department of General Services, Office of Legal Services at 322-5953.



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