

NECESSITY: STATEMENT OF REASONS

SUMMARY

The following materials describe the content of the proposed regulations and explain the reasons for the major policy choices underlying each section. The order of presentation mirrors the decisions that contracting agencies must make to execute a contract covered by Government Code Section 19134:

Section 1896.300 provides **definitions** of terms used throughout the regulations.

Section 1896.310 clarifies the **acceptable methods** for contractors to provide Employee Benefits, which include provision for actual insurance benefits, equivalent cash payments, or a combination thereof.

Section 1896.320 describes **how the applicable benefit rates are calculated**, and notifies state agencies that the current applicable rates are posted annually on the **Department of Personnel Administration's website**.

Section 1896.330 notifies state agencies that instructions for seeking **reimbursement** for the added cost of paying Employee Benefits pursuant to Government Code Section 19134 can be located in Department of Finance Budget Letters.

Section 1896.340 specifies the required contents for **solicitations** for contracts subject to Government Code Section 19134.

Section 1896.350 specifies the required contents for **bids** for contracts subject to Government Code Section 19134.

Section 1896.360 specifies the required contents for **contracts** subject to Government Code Section 19134.

Section 1896.370 lists the items required to assure **compliance** with Government Code Section 19134, including monthly contractor reports, audit provisions and consequences for non-compliance with Government Code Section 19134.

STATEMENT OF REASONS DETAIL

1896.300. Definitions: This section makes explicit the terms used in the remaining sections.

- (a) The definition of a "Qualifying Contract" brings together all the statutory provisions concerning the types of contracts covered by Government Code Section 19134. The first and second points emphasize that the law covers only "personal services" contracts that last longer than 90 days. The third point removes potential ambiguities resulting from the statute's mixing of service criteria with personnel classification criteria. We have included all the statutory items in an all-inclusive list of service types.

- (b) The definition of a “Covered Employee” brings together the definition of a “Qualified Contract” with the types of services to be performed by a contractor’s employees who must receive benefits. To implement the legislative intent to cover low-wage employees who directly perform the type of work specified in the statute, this definition includes only employees who perform statutorily specified services on more than an incidental basis, and excludes those who perform solely supervisory or administrative services. The definition also excludes owner-operators, as they are not “employees.”
- (c) The definition of “Employee Benefits” makes explicit the requirement for the contractor to provide the required coverage, either through a purchased plan or by self-insurance. This definition also ties the requirement to provide “Basic Health Care” to Department of Managed Health Care regulations defining Health Maintenance Organizations (10 CCR Section 1300.67). There are no similar standards generally applicable to Dental services or Vision services.
- (d) The definition of “Cash Payment” ties this term to statutory provisions providing that the contractor may choose to pay cash to Covered Employees working on a Qualifying Contract in lieu of providing actual benefits.

1896.310. Contractor Requirements

This section provides details for contractor compliance with Government Code Section 19134, including (a) the provision of benefits, (b) the provision of cash payments, and (c) the provision of a combination of benefits and cash payments. The combination of benefits and cash payments is not specifically mentioned in the statute, nor is it prohibited. This method is consistent with the requirement that a contractor offer a specific dollar value (85% of the calculated benefits for state employees performing similar work). This provision would permit contractors to achieve this goal in a flexible manner (e.g. in the event a purchased benefits plan costs less than the 85% required value, contractors can make up the difference in cash thereby providing the full statutorily-mandated amount to employees).

1896.320. Benefits and Cash Payment Calculations

This section notifies state agencies where to locate the currently applicable benefit rates to use in solicitations and Qualifying Contracts, i.e. on the Department of Personnel’s website, published by February 1 each year. (The location and timing of posting was suggested by Department of Personnel Administration counsel and staff.) This section also describes the method by which the Department of Personnel Administration calculates the detailed and blended rates. (Again, this information was provided by Department of Personnel Administration staff.)

Subsection (a) describes “Detailed Rates” and specifies the calculations used to derive hourly detailed rates. Subsection (b) describes “Blended Rates” and specifies the calculations used to derive hourly blended rates. The calculations use the Department of Personnel Administration’s figure (173.333) for converting monthly costs to hourly costs.

1896.330. Reimbursement to State Agencies

This section informs state agencies to refer to Department of Finance Budget Letters for instructions regarding seeking reimbursement for the added costs of paying benefits pursuant to Government Code Section 19134. Department of Finance staff proposed the basic language for this section.

1896.340. Qualifying Contract Solicitations

To assure that state agencies preparing to contract for services covered by Government Code Section 19134 take into account its provisions, this section requires solicitations to: (a) inform bidders of the applicability of section 19134 and instruct bidders to include provisions for employee benefits and/or cash payments in their bids, (b) instruct bidders whether to include employee benefits as part of the cost bid or as part of minimum qualifications requirements, (c) provide bidders the currently applicable benefit rate amount(s) from the Department of Personnel Administration's Schedule of Employee Benefits, and (d) include, by addendum to the solicitation, any rate changes occurring after the solicitation release.

1896.350. Bids for Qualifying Contracts

To assure that employers who bid on contracts subject to Government Code Section 19134 acknowledge and agree to their obligations under section 19134, this section requires that, in addition to complying with all other solicitation instructions, bidders must include in their bids a commitment to comply with section 19134 and the corresponding regulations.

1896.360. Requirements for Qualifying Contracts

Subsection (a) sets forth the basic provisions to be included in Qualifying Contracts as follows:

(1) Provides that Qualifying Contracts must specifically mention Government Code Section 19134, and the applicable hourly rate(s) (blended or detailed).

(2) Provides for that Qualifying Contracts include a provision allowing for adjustment of Employee Benefits and/or Cash Payment amounts retroactively by contract amendment to reflect changes in the Schedule of Employee Benefit Rates published by the Department of Personnel Administration. This provision settles questions about possible changes in the Schedule of Employee Benefit Rates during the course of a contract.

(3) Requires that Qualifying Contracts include provision for monthly reporting by the contractor, in accordance with Subsection 1896.370(a). This ensures that such reporting becomes a contractual obligation of the contractor as a precondition to receiving payments under the contract.

(4) Requires that Qualifying Contracts include notice that they are subject to audit for compliance with Section 19134.

(5) Provides that Qualifying Contracts include notice, pursuant to Government Code Section 19134(e), that failure to comply with the provisions of Government Code Section 19134 constitutes a material breach of the contract which could result in contract termination.

Subsection (b) requires that contractors electing to provide actual employee benefits submit proof of coverage to the contracting agency, so the agency can be assured that the contractor has indeed obtained insurance for covered employees.

1896.370. Compliance

Sections 1896.340, 1896.350 and 1896.360 lay the basis for compliance with Government Code Section 19134 by requiring solicitations, bids and contracts to provide for information that reflects contractor effort in providing health benefits and/or cash payments.

Subsection (a) of this section provides a detailed description of the contractor's monthly reporting requirements. This reporting will assure that relevant information is conveyed to contracting state agencies on a monthly basis to help monitor compliance, including the number and names of covered employees, hours worked by covered employees, amounts for Employee Benefits and Cash Payments for each covered employee, and total amounts paid. Administrative and other indirect costs are excluded from these figures because the statute bases its requirements on contractor benefits "valued at least 85 percent of the state employer cost of benefits." Permitting an employer to include administrative and/or overhead costs that do not measure the value of the direct benefits to the employee would defeat the purpose of the law.

This reporting provision is critical to ensuring compliance with the mandate of Government Code Section 19134; without it, state agencies would have no way to determine whether the additional costs they are paying the contractor for employee benefits under the contract are in fact being distributed to the contractor's employees. Government Code Section 19134 is designed to improve the health and welfare of employees working in traditionally low-paying jobs. The reporting provision contained in these regulations will assist in ensuring the statutory purpose is carried out. The reporting provision is therefore deemed necessary for the health, safety, and general welfare of the people of the state as required by Government Code Section 11346.3(c).

Subsection (b) affirms the state's authority to audit such contracts and **Subsection (c)** emphasizes the statutory provision defining failure to comply with Government Code Section 19134 a material breach of contract.