

2052.242-71

summary of the issue and its disposition will be included in the NRC Weekly Information Report submitted by the Office Director. The DPV file will be retained in the Office or Region for a minimum of one year thereafter. For purposes of the contract, the DPV shall

48 CFR Ch. 20 (10-1-02 Edition)

be considered a deliverable under the contract. Based upon the Office Director or Regional Administrator's report, the matter will be closed.

(End of clause)

CHAPTER 21—OFFICE OF PERSONNEL MANAGEMENT, FEDERAL EMPLOYEES GROUP LIFE INSURANCE FEDERAL ACQUISITION REGULATION

(Parts 2100 to 2199)

SUBCHAPTER A—GENERAL

| <i>Part</i> | | <i>Page</i> |
|-------------|---|-------------|
| 2101 | Federal Acquisition Regulations System | 561 |
| 2102 | Definitions of words and terms | 562 |
| 2103 | Improper business practices and personal conflicts of interest | 563 |
| 2104 | Administrative matters | 564 |

SUBCHAPTER B—ACQUISITION PLANNING

| | | |
|------|---|-----|
| 2105 | Publicizing contract actions | 565 |
| 2106 | Competition requirements | 565 |
| 2109 | Contractor qualifications | 565 |
| 2110 | Specifications, standards, and other purchase de- scriptions | 566 |

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

| | | |
|------|----------------------------------|-----|
| 2114 | Sealed bidding | 568 |
| 2115 | Contracting by negotiation | 568 |
| 2116 | Types of contracts | 571 |

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

| | | |
|------|---|-----|
| 2122 | Application of labor laws to government acqui- sitions | 572 |
| 2124 | Protection of privacy and freedom of information | 572 |

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

| | | |
|------|---------------------------|-----|
| 2128 | Bonds and Insurance | 573 |
| 2129 | Taxes | 573 |

48 CFR Ch. 21 (10-1-02 Edition)

| <i>Part</i> | | <i>Page</i> |
|-------------|---|-------------|
| 2131 | Contract cost principles and procedures | 574 |
| 2132 | Contract financing | 576 |
| 2133 | Protests, disputes, and appeals | 577 |
| | SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING | |
| 2137 | Service contracting | 578 |
| | SUBCHAPTER G—CONTRACT MANAGEMENT | |
| 2143 | Contract modifications | 579 |
| 2144 | Subcontracting policies and procedures | 579 |
| 2146 | Quality Assurance | 579 |
| 2149 | Termination of contracts | 580 |
| | SUBCHAPTER H—CLAUSES AND FORMS | |
| 2152 | Precontract provisions and contract clauses | 582 |

SUBCHAPTER A—GENERAL

PART 2101—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 2101.1—Purpose, Authority, Issuance

- Sec.
2101.101 Purpose.
2101.102 Authority.
2101.103 Applicability.
2101.104 Issuance.
2101.104-1 Publication and code arrangement.
2101.104-2 Arrangement of regulations.

Subpart 2101.3—Agency Acquisition Regulations

- 2101.301 Policy.
2101.370 Effective date of LIFAR amendments.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40372, July 28, 1993, unless otherwise noted.

Subpart 2101.1—Purpose, Authority, Issuance

2101.101 Purpose.

(a) This subpart establishes Chapter 21, Office of Personnel Management Federal Employees' Group Life Insurance Federal Acquisition Regulation, within title 48, the Federal Acquisition Regulations System, of the Code of Federal Regulations. The short title of this regulation shall be LIFAR.

(b) The purpose of the LIFAR is to implement and supplement the Federal Acquisition Regulation (FAR) specifically for acquiring and administering a contract, or contracts, for life insurance under the Federal Employees' Group Life Insurance (FEGLI) Program.

2101.102 Authority.

(a) The LIFAR is issued by the Director of the Office of Personnel Management in accordance with the authority of 5 U.S.C. Chapter 87 and other applicable laws and regulations.

(b) The LIFAR does not replace or incorporate regulations found at 5 CFR

Parts 870 through 874, which provide the substantive policy guidance for administration of the FEGLI program under 5 U.S.C. chapter 87. The following is the order of precedence in interpreting a contract provision under the FEGLI Program:

- (1) 5 U.S.C. chapter 87.
- (2) 5 CFR parts 870 through 874.
- (3) 48 CFR chapters 1 and 21.
- (4) The FEGLI Program contract.

2101.103 Applicability.

The FAR is generally applicable to contracts negotiated in the FEGLI Program pursuant to 5 U.S.C. chapter 87. The LIFAR implements and supplements the FAR where necessary to identify basic and significant acquisition policies unique to the FEGLI Program.

2101.104 Issuance.

2101.104-1 Publication and code arrangement.

(a) The LIFAR and its subsequent changes are published in:

- (1) Daily issues of the FEDERAL REGISTER; and
- (2) The Code of Federal Regulations, in cumulative form.

(b) The LIFAR is issued as chapter 21 of title 48 of the Code of Federal Regulations.

2101.104-2 Arrangement of regulations.

(a) *General.* The LIFAR conforms with the arrangement and numbering system prescribed by FAR 1.104 and 1.303. However, when a FAR part or subpart is adequate for use without further OPM implementation or supplementation, there will be no corresponding LIFAR part, subpart, etc. The LIFAR is to be used in conjunction with the FAR and the order for use is:

- (1) FAR;
- (2) LIFAR.

(b) *Citation.* (1) In formal documents, such as legal briefs, citation of Chapter 21 material that has been published in the FEDERAL REGISTER will be to title 48 of the Code of Federal Regulations.

2101.301

(2) In informal documents, any section of chapter 21 may be identified as “LIFAR” followed by the section number.

Subpart 2101.3—Agency Acquisition Regulations

2101.301 Policy.

(a) Procedures, contract clauses, and other aspects of the acquisition process for contracts in the FEGLI Program shall be consistent with the principles of the FAR. Changes to the FAR that are otherwise authorized by statute or applicable regulation, dictated by the practical realities associated with certain unique aspects of life insurance, or necessary to satisfy specific needs of the Office of Personnel Management, to the extent not otherwise regulated in the FAR, shall be implemented as amendments to the LIFAR and published in the FEDERAL REGISTER, or as deviations to the FAR in accordance with FAR subpart 1.4.

(b) Internal procedures, instructions, and guides which are necessary to clarify or implement the LIFAR within OPM may be issued by agency officials designated by the Director, OPM. Normally, such designations will be specified in the OPM Administrative Manual, which is routinely available to agency employees and will be made available to interested outside parties upon request. Clarifying or implementing procedures, instructions, and guides issued pursuant to this section of the LIFAR must:

(1) Be consistent with the policies and procedures contained in this regulation as implemented and supplemented from time to time; and

(2) Follow the format, arrangement, and numbering system of this regulation to the extent practicable.

2101.370 Effective date of LIFAR amendments.

(a) Except as provided in paragraphs (b) and (c) of this section, an amendment to the LIFAR is effective when promulgated or as provided in the amendment.

(b) Except as provided in paragraphs (c) and (d) of this section, if the LIFAR is amended in a manner which would increase the contractor's(s') costs or li-

48 CFR Ch. 21 (10-1-02 Edition)

abilities under the contract(s), the amendment will be made effective the October 1 subsequent to the amendment's promulgation, unless the contractor(s) agree(s) in writing to an earlier date.

(c) Except as provided for in paragraph (d) of this section, if the LIFAR is amended between July 31 and October 1 in a manner which would increase the contractor's(s') costs or liabilities under the contract(s), the amendment will not be effective until the October 1 in the year following the amendment's promulgation, unless the contractor(s) agree(s) in writing to an earlier date.

(d) Paragraphs (b) and (c) of this section are not applicable to amendments that are necessary to implement new or existing legislation.

PART 2102—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2102.1—Definitions

2102.101 Definitions.

In this chapter, unless otherwise indicated, the following terms have the meaning set forth in this subpart.

Contract means a policy or policies of group life and accidental death and dismemberment insurance to provide the benefits specified by 5 U.S.C. chapter 87.

Contractor means an insurance company contracted to provide the benefits specified by 5 U.S.C. chapter 87.

Director means the Director of the Office of Personnel Management.

Employees' Life Insurance Fund means the trust fund established under 5 U.S.C. 8714.

FEGLI Program means the Federal Employees' Group Life Insurance Program.

Fixed price with limited cost redetermination plus fixed fee contract means a contract which provides for:

(1) A fixed price during the contract year with a cost element that is adjusted at the end of the contract term based on costs incurred under the contract; and

Office of Personnel Management

2103.570

(2) A profit or fee that is fixed at the beginning of the contract term. The amount of adjustment for costs is limited to the amount in the Employees' Life Insurance Fund. The fee will be in the form of either a risk charge or a service charge.

Insurance company, as provided in 5 U.S.C. 8709, means a company licensed to transact life and accidental death and dismemberment insurance under the laws of all the States and the District of Columbia. It must have in effect, on the most recent December 31 for which information is available to the Office of Personnel Management, an amount of employee group life insurance equal to at least 1 percent of the total amount of employee group life insurance in the United States in all life insurance companies.

OPM means the Office of Personnel Management.

Reinsurer means a company that reinsures portions of the total amount of insurance under the contract as specified in 5 U.S.C. 8710 and is not an agent or representative of the contractor.

Subcontract means a contract entered into by any subcontractor that furnishes supplies or services for performance of a prime contract under the FEGLI Program. Except for the purpose of FAR Subpart 22.8—Equal Employment Opportunity, the term "subcontract" does not include a contract with a reinsurer under the FEGLI Program.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor under the FEGLI Program contract. Except for the purpose of FAR Subpart 22.8—Equal Employment Opportunity, the term "subcontractor" does not include reinsurers under the FEGLI Program.

[58 FR 40373, July 28, 1993]

PART 2103—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2103.5—Other Improper Business Practices

Sec.

2103.570 Misleading, Deceptive, or Unfair Advertising.

2103.571 Contract clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40373, July 28, 1993, unless otherwise noted.

Subpart 2103.5—Other Improper Business Practices

2103.570 Misleading, Deceptive, or Unfair Advertising.

(a) OPM prepares and makes available to enrolled Federal employees a booklet describing the provisions of the FEGLI Program which includes information about eligibility, enrollment, and general procedures. The booklet also operates as a certification of the employee's enrollment in the FEGLI Program. Because all necessary information is made available by OPM, advertising directed specifically at Federal employees and life insurance agent contacts with Federal employees for the purpose of selling FEGLI Program coverage are prohibited.

(b) The contractor is prohibited from making incomplete, incorrect comparisons or using disparaging or minimizing techniques to compare its other products or services to the benefits of the FEGLI Program. The contractor agrees that any advertising material authorized and released by the contractor which mentions the FEGLI Program shall be truthful and not misleading, and shall present an accurate statement of FEGLI Program benefits. The contractor will use its best efforts to assure that its life insurance agents

2103.571

are aware of and abide by this prohibition.

(c) The contractor's failure to conform to the requirements of this subpart shall be considered by OPM in the determination of the service charge prenegotiation objective.

2103.571 Contract clause.

The clause at 2152.203-70 shall be inserted in FEGLI Program contracts and in subcontracts.

PART 2104—ADMINISTRATIVE MATTERS

Subpart 2104.7—Contractor Records Retention

Sec.
2104.703 Policy.

Subpart 2104.70—Designation of Authorized Personnel

2104.7001 Designation of authorized personnel.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40373, July 28, 1993, unless otherwise noted.

48 CFR Ch. 21 (10-1-02 Edition)

Subpart 2104.7—Contractor Records Retention

2104.703 Policy.

In view of the unique payment schedules of FEGLI Program contracts and the compelling need for records retention periods sufficient to protect the Government's interest, contractors shall be required to maintain records for periods determined in accordance with the provisions of FAR 4.703(b)(1) and LIFAR 2115.106-270.

Subpart 2104.70—Designation of Authorized Personnel

2104.7001 Designation of authorized personnel.

The contractor shall notify the contracting officer in writing of the name(s), title(s), and address(es) of the individual(s) authorized to act on behalf of the contractor regarding a LIFAR Program contract. The notice shall include any restriction(s) upon the authority of the individual(s). Any change to the notice must also be provided to the contracting officer in writing.

SUBCHAPTER B—ACQUISITION PLANNING

PART 2105—PUBLICIZING CONTRACT ACTIONS

AUTHORITY: 5 U.S.C. 8709; 40 U.S.C. 486(e); 48 CFR 1.301.

Subpart 2105.70—Applicability

2105.7001 Applicability.

FAR part 5 has no practical application to the FEGLO Program because OPM does not issue solicitations. Eligible contractors (i.e., qualified life insurance companies) are identified in accordance with 5 U.S.C. 8709.

[58 FR 40373, July 28, 1993]

PART 2106—COMPETITION REQUIREMENTS

AUTHORITY: 5 U.S.C. 8709; 40 U.S.C. 486(e); 48 CFR 1.301.

Subpart 2106.70—Applicability

2106.7001 Applicability.

FAR part 6 has no practical application to the FEGLI Program in view of the statutory exception provided by 5 U.S.C. 8709.

[58 FR 40374, July 28, 1993]

PART 2109—CONTRACTOR QUALIFICATIONS

Subpart 2109.4—Debarment, Suspension, and Ineligibility

Sec.

2109.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

2109.409 Certification and contract clause.

Subpart 2109.70—Minimum Standards for FEGLI Program Contractors

2109.7001 Minimum standards for FEGLI Program contractors.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40374, July 28, 1993, unless otherwise noted.

Subpart 2109.4—Debarment, Suspension, and Ineligibility

2109.408 Certification regarding debarment, suspension, proposed debarment and other responsibility matters.

FAR subpart 9.4 is implemented by changing the FAR offeror's certification at FAR 52.209-5 (which is part of a solicitation) to a pre-contract certificate and a contract clause. These provisions reflect the FEGLI Program's statutory exemption from competitive bidding (5 U.S.C. 8709), which obviates the issuance of solicitations.

2109.409 Certification and contract clause.

(a) The contracting officer may require the precontract certificate in 2152.209-70 to be filed prior to or during negotiations.

(b) The contracting officer shall insert the clause at 2152.209-71 in all FEGLI Program contracts.

Subpart 2109.70—Minimum Stand- ards for FEGLI Program Con- tractors

2109.7001 Minimum standards for FEGLI Program contractors.

(a) The contractor must meet the requirements of chapter 87 of title 5, United States Code; parts 870, 871, 872, 873, and 874 of title 5, Code of Federal Regulations; chapter 1 of title 48, Code of Federal Regulations, and the standards in this subpart. The contractor shall continue to meet these and the following statutory and regulatory requirements while under contract with OPM. Failure to meet these requirements and standards is cause for OPM's termination of the contract in accordance with part 2149 of this chapter.

(b) The contractor must actually be engaged in the life insurance business and must be licensed to transact life and accidental death and dismemberment insurance under the laws of all the States and the District of Columbia at the time of application.

Pt. 2110

48 CFR Ch. 21 (10-1-02 Edition)

(c) The contractor must not be a Federal, State, local or territorial government entity.

(d) The contractor must not be debarred, suspended or ineligible to participate in Government contracting or subcontracting for any reason.

(e) The contractor must keep statistical and financial records regarding the FEGLI Program separate from that of all its other lines of business.

(f) The contractor must enter into rate redeterminations as deemed necessary by OPM.

(g) The contractor must furnish such reasonable reports as OPM determines are necessary to administer the FEGLI Program.

(h) The contractor must establish and maintain a system of internal control that provides reasonable assurance that:

(1) The payment of claims and other expenses is in compliance with legal, regulatory, and contractual guidelines;

(2) Funds, property, and other FEGLI Program assets are safeguarded against waste, loss, unauthorized use, or misappropriation;

(3) Revenues and expenditures applicable to FEGLI Program operations are properly recorded and accounted for to permit the preparation of reliable financial reporting and to maintain accountability over assets; and,

(4) Data are accurately and fairly disclosed in all reports required by OPM.

(i) The contractor must permit representatives of OPM and of the General Accounting Office to audit and examine records and accounts pertaining to the FEGLI Program at such reasonable times and places as may be designated by OPM or the General Accounting Office.

PART 2110—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Subpart 2110.70—Contract Specifications

Sec.
2110.7000 Scope of subpart.

2110.7001 Definitions.
2110.7002 Contractor investment of FEGLI Program funds.

2110.7003 Significant events.

2110.7004 Contract clauses.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40374, July 28, 1993, unless otherwise noted.

Subpart 2110.70—Contract Specifications

2110.7000 Scope of subpart.

This subpart prescribes mandatory specifications for performance under FEGLI Program contracts.

2110.7001 Definitions.

Investment income, as used in this subpart, means the net amount on an investment of FEGLI Program funds earned by the contractor after deducting reasonable, necessary, and properly allocated investment expenses.

Significant event, as used in this subpart, means any occurrence or anticipated occurrence that might reasonably be expected to have a material effect upon the contractor's ability to meet its obligations under the LIFAR.

2110.7002 Contractor investment of FEGLI Program funds.

(a) The contractor is required to invest and reinvest all FEGLI Program funds on hand, including any attributable to the special contingency reserve (as used in 5 U.S.C. 8712), until needed to discharge promptly the obligations incurred under the contract. Within the constraints of safety and liquidity of investments, the contractor shall seek to maximize investment income.

Office of Personnel Management

2110.7004

(b) The contractor is required to credit income earned from its investment of FEGLI Program funds to the FEGLI Program. Thus, the contractor must be able to allocate investment income to the FEGLI Program in an appropriate manner. If the contractor fails to invest funds on hand, properly allocate investment income, or credit any income due to the contract, for whatever reason, it shall return or credit any investment income lost to OPM or the FEGLI Program, retroactive to the date that such funds

should have been originally invested in accordance with 2152.210-70.

2110.7003 Significant events.

The contractor is required to inform the contracting officer of all significant events.

2110.7004 Contract clauses.

(a) The clause at 2152.210-70 shall be inserted in all FEGLI Program contracts.

(b) The clause at 2152.210-71 shall be inserted in all FEGLI Program contracts.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2114—SEALED BIDDING

AUTHORITY: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2114.70—Applicability

2114.7001 Applicability.

FAR part 14 has no practical application to the FEGLI Program in view of the statutory exemption provided by 5 U.S.C. 8709, 8714a, 8714b, and 8714c.

[58 FR 40375, July 28, 1993]

PART 2115—CONTRACTING BY NEGOTIATION

Subpart 2115.1—General Requirements for Negotiation

Sec.

2115.106 Contract clauses.

2115.106-270 Specific retention periods.

2115.170 Negotiation authority.

Subpart 2115.4—Solicitation and Receipt of Proposals and Quotations

2115.401 Applicability.

Subpart 2115.6—Source Selection

2115.602 Applicability.

Subpart 2115.8—Price Negotiation

2115.802 Policy.

Subpart 2115.9—Profit

2115.902 Policy.

2115.905 Profit analysis factors.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40375, July 28, 1993, unless otherwise noted.

Subpart 2115.1—General Requirements for Negotiation

2115.106 Contract clauses.

2115.106-270 Specific retention periods.

Unless the contracting officer determines that there exists a compelling reason to include only the contract clause specified by FAR 52.215-2, "Audit—Negotiation," the contracting officer shall also insert the clause at 2152.215-70 in all FEGLI Program contracts.

2115.170 Negotiation authority.

The authority to negotiate FEGLI Program contracts is conferred by 5 U.S.C. 8709.

Subpart 2115.4—Solicitation and Receipt of Proposals and Quotations

2115.401 Applicability.

(a) FAR Subpart 15.4 has no practical application to the FEGLI Program because OPM does not issue solicitations.

(b) OPM will announce any opportunities to submit applications to provide life insurance through the FEGLI Program in insurance industry periodicals and other publications as deemed appropriate by OPM. The announcement will contain information on the address to which requests for application packages should be submitted and on deadline dates for submission of completed applications.

(c) Eligible contractors (i.e., qualified life insurance companies) are identified in accordance with 5 U.S.C. 8709. Offerors voluntarily come forth in accordance with procedures provided in 2115.602.

(d) OPM may approve one or more life insurance companies that, in its judgment, are best qualified to provide life insurance coverage to Federal enrollees.

Subpart 2115.6—Source Selection**2115.602 Applicability.**

FAR Subpart 15.6 has no practical application to the FEGLI Program because prospective contractors (insurance companies) are considered for inclusion in the FEGLI Program in accordance with criteria provided in 5 U.S.C. chapter 87, LIFAR 2109.7001, and the following:

(a) Applications must be signed by an individual with legal authority to enter into a contract on behalf of the company for the dollar level of claims and expenses anticipated.

(b) Applications will be reviewed for evidence of substantial compliance in the following areas:

(1) *Management*: Stable management with experience pertinent to the life insurance industry and, in particular, large group management; sufficient operating experience to enable OPM to evaluate past and expected future performance.

(2) *Marketing*: Past ability to attract and retain large group contracts; steady or increasing amount of group life insurance in force.

(3) *Legal expertise*: Demonstrated competence in researching, compiling, and implementing various Federal and State laws that may impact payment of benefits; ability to defend legal challenges to payment of benefits.

(4) *Financial condition*: Establishment of firm budget projections and demonstrated success in keeping costs at or below those projections on a regular basis; evidence of the ability to sustain operations in the future and to meet obligations under the contract OPM might enter into with the company; adequate reserve levels; assets exceeding liabilities.

(5) *Establishment of office*: Ability to establish an administrative office capable of assessing, tracking, and paying claims.

(6) *Internal controls*: Ability to establish and maintain a system of internal control that provides reasonable assurance that the payment of claims and other expenses will be in compliance with legal, regulatory, and contractual guidelines; funds, property, and other FEGLI Program assets will be safeguarded against waste, loss, unauthor-

ized use, or misappropriation; and revenues and expenditures applicable to FEGLI Program operations will be properly recorded and accounted for to permit the preparation of timely and accurate financial reporting and to maintain accountability over assets.

Subpart 2115.8—Price Negotiation**2115.802 Policy.**

Pricing of FEGLI Program premium rates is governed by 5 U.S.C. 8707, 8708, 8711, 8714a, 8714b, and 8714c. FAR Subpart 15.8 shall be implemented by applying cost analysis policies and procedures. To the extent that reasonable or good faith actuarial estimates are used for pricing, such estimates will be deemed acceptable and, if inaccurate, will not constitute defective pricing.

Subpart 2115.9—Profit**2115.902 Policy.**

(a) *Risk charge*. (1) Section 8711(d) of title 5, United States Code, provides for payment of a risk charge to FEGLI Program contractors as compensation for the risk assumed under the FEGLI Program. It is appropriate to pay such a charge when substantial risk is borne by the contractor; that is, when the balance in the Employees' Life Insurance Fund is no larger than five times annual claims.

(2) The risk charge is determined by agreement between the contractor and OPM. The amount of risk charge shall be specified in the contract.

(b) *Waiver of the risk charge*. (1) When the Fund balance is greater than five times annual claims, OPM and the contractor may agree that the contractor will relinquish the risk charge in favor of a profit opportunity in the form of a service charge for the contractor. The service charge so determined shall be the total service charge that may be negotiated for the contract and shall encompass any service charge (whether entitled service charge, profit, fee, contribution to surpluses, etc.) that may have been negotiated by the prime contractor with any subcontractor. At no time may both a risk charge and a service charge be paid for the same portion of a policy year.

2115.905

(2) Once agreement to relinquish the risk charge is made, the agreement may not be cancelled unless OPM and the contractor mutually agree to reinstitute payment of a risk charge; or unless the Fund balance falls below the level defined in 2115.902(a) and 30 days notice of cancellation is provided; or unless the contractor or OPM provide notice of cancellation for any reason 1 year prior to the date cancellation is sought.

(c) Any profit prenegotiation objective (service charge) will be determined on the basis of a weighted guidelines structured approach.

2115.905 Profit analysis factors.

(a) The OPM contracting officer will apply a weighted guidelines method when developing the prenegotiation objective (service charge) for the FEGLI Program contract. In accordance with the factors defined in FAR 15.905-1, OPM will apply the appropriate weights derived from the ranges specified in paragraph (b) of this section and will determine the prenegotiation objective based on the contractor's Basic and Family Optional insurance claims paid in the previous contract year.

(1) *Contractor performance.* OPM will consider such elements as the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, effectiveness of internal controls systems in place, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress as measures of economical and efficient contract performance. This factor will be judged apart from the contractor's *basic* responsibility for contract compliance and will be a measure of the extent and nature of the contractor's contribution to the FEGLI Program through the application of managerial expertise and effort. Evidence of effective contract performance will receive a plus weight, and poor performance or failure to comply with contract terms and conditions a zero weight. Innovations of benefit to the FEGLI Program will generally receive a plus weight; documented inattention or indifference to effective operations, a zero weight.

48 CFR Ch. 21 (10-1-02 Edition)

(2) *Contract cost risk.* OPM will evaluate the contractor's risk annually in relation to the amount in the Employees' Life Insurance Fund and will evaluate this factor accordingly.

(3) *Federal socioeconomic programs.* OPM will consider documented evidence of successful, contractor-initiated efforts to support such Federal socioeconomic programs as drug and substance abuse deterrents, and other concerns of the type enumerated in FAR 15.905-1(c) as a factor in negotiating profit. This factor will be related to the quality of the contractor's policies and procedures and the extent of unusual effort or achievement demonstrated. Evidence of effective support of Federal socioeconomic programs will result in a plus weight; indifference to Federal socioeconomic programs will result in a zero weight; and only deliberate failure to provide opportunities to persons and organizations that would benefit from these programs will result in a negative weight.

(4) *Capital investments.* This factor is generally not applicable to FEGLI Program contracts because facilities capital cost of money may be an allowable administrative expense. Generally, this factor shall be given a weight of zero. However, special purpose facilities or investment costs of direct benefit to the FEGLI Program that are not recoverable as allowable or allocable administrative expenses may be taken into account in assigning a plus weight.

(5) *Cost Control.* This factor is based on the contractor's previously demonstrated ability to perform effectively and economically. In addition, consideration will be given to measures taken by the contractor that result in productivity improvements and other cost containment accomplishments that will be of future benefit to the FEGLI Program. Examples are containment of costs associated with processing claims; success at preventing waste, loss, unauthorized use, or misappropriation of FEGLI Program assets; and success at limiting and recovering erroneous benefit payments.

(6) *Independent Development.* Consideration will be given to independent contractor-initiated efforts, such as the development of a unique and enhanced customer support system, that

are of demonstrated value to the FEGLI Program and for which developmental costs have not been recovered directly or indirectly through allowable or allocable administrative expenses. This factor will be used to provide additional profit opportunities based upon an assessment of the contractor's investment and risk in developing techniques, methods, practices, etc., having viability to the Program at large. Improvements and innovations recognized and rewarded under any other profit factor cannot be considered.

(b) The weight ranges for each factor to be used in the weighted guidelines approach are set forth below:

| Profit factor | Weight ranges |
|---|---------------------|
| 1. Contractor performance | 0 to +.0005 |
| 2. Contract cost risk | +.000001 to +.00001 |
| 3. Federal socioeconomic programs | - to +.00003 |
| 4. Capital investment | 0 to +.00001 |
| 5. Cost control | -.0002 to +.0002 |
| 6. Independent development | 0 to +.00003 |

PART 2116—TYPES OF CONTRACTS

Subpart 2116.1—Selecting Contract Types

Sec.

2116.105 Solicitation provision.

Subpart 2116.2—Fixed-Price Contracts

2116.270 FEGLI Program contracts.

2116.270-1 Contract clauses.

AUTHORITY: 5 U.S.C. 8709; 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40376, July 28, 1993, unless otherwise noted.

Subpart 2116.1—Selecting Contract Types

2116.105 Solicitation provision.

FAR 16.105 has no practical application because the statutory provisions of 5 U.S.C. chapter 87 obviate the issuance of solicitations.

Subpart 2116.2—Fixed-Price Contracts

2116.270 FEGLI Program contracts.

FEGLI Program contracts will be fixed price with limited cost redetermination plus fixed fee. The premium to the contractor will be based on an estimate of benefits and administrative costs, plus the fixed service or risk charge, and will be determined annually. Claims costs, including benefits and administrative expenses, in excess of premiums will be paid up to the amount in the Employees' Life Insurance Fund. Payment for costs exceeding the amount in the Fund are the responsibility of the contractor and reinsurers. The fee is fixed at the inception of each contract year. The fee does not vary with the actual costs, but may be adjusted as a result of changes in the work to be performed under the contract. The fee will be in the form of either a risk charge or a service charge.

(a) *Risk charge.* The risk charge will be determined as prescribed in 5 U.S.C. 8711(d) and paragraph 2115.902(a)(2) of this subchapter. It will consist of a negotiated amount which will reflect the risk assumed by the contractor and the reinsurers and may be adjusted as a result of increased or decreased risk under the contract. When the applicable fee is a risk charge, no service charge shall be payable for the same period of time.

(b) *Service charge.* The amount of the service charge will be determined using a weighted guidelines structured approach in accordance with 2115.905 and negotiated with the contractor at the beginning of the contract term. When the applicable fee is a service charge, no risk charge will be paid for the same portion of a policy year in which a service charge is paid.

2116.270-1 Contract clauses.

(a) The clause at 2152.216-70 shall be inserted in all FEGLI Program contracts when a risk charge is negotiated.

(b) The clause at 2152.216-71 shall be inserted in all FEGLI Program contracts when a service charge is negotiated.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2122—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

AUTHORITY: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2122.1—Basic Labor Policies

2122.170 Contract clauses.

The provisions at FAR sections 52.222-21, 52.222-22, 52-222.25 are implemented by changing the word “offeror” to “Contractor” and the word “solicitation” to “contract” wherever they appear in the text to reflect the FEGLI Program’s statutory exemption from competitive bidding (5 U.S.C. 8709), which obviates the issuance of solicitations.

[58 FR 40377, July 28, 1993]

PART 2124—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2124.70—Protection of Individual Privacy

Sec.
2124.102 General.

2124.102-70 Policy.
2124.104 Contract clauses.
2124.104-70 Contract clause.

AUTHORITY: 5 U.S.C. 8716, 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40377, July 28, 1993, unless otherwise noted.

Subpart 2124.70—Protection of Individual Privacy

2124.102 General.

2124.102-70 Policy.

Records retained by FEGLI Program contractors on Federal insureds and members of their families serve the contractors’ own commercial function of paying FEGLI Program claims and are not maintained to accomplish an agency function of OPM. Consequently, the records do not fall within the provisions of the Privacy Act. Nevertheless, OPM recognizes the need for the contractors to keep certain records confidential. The clause at 2152.224-70 addresses this concern.

2124.104 Contract clauses.

2124.104-70 Contract clause.

The clause at 2152.224-70 shall be inserted in all FEGLI Program contracts.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2128—BONDS AND INSURANCE

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2128.3—Insurance

2128.370 Contract clause.

The contract clause at FAR 52.228-7 is a mandatory clause in FEGLI Program contracts, except paragraph (d) is modified as follows:

(d) The Government's liability under paragraph (c) of this clause is limited to the amount available in the Employee's Life Insurance Fund. Nothing in this contract shall be construed as implying that the Government will make additional funds available later or that Congress will appropriate funds later sufficient to meet deficiencies.

[58 FR 40377, July 28, 1993]

PART 2129—TAXES

Subpart 2129.1—General

Sec.
2129.170 Policy.

Subpart 2129.3—State and Local Taxes

2129.302 Application of State and local taxes to the Government.

2129.305 State and local tax exemptions.

Subpart 2129.4—Contract Clauses

2129.401 Domestic contracts.

2129.401-70 FEGLI Program contract clauses.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40377, July 28, 1993, unless otherwise noted.

Subpart 2129.1—General

2129.170 Policy.

(a) OPM shall consider taxes as a FEGLI Program cost under 2131.205-41.

(b) For purposes of the limited cost redetermination of a FEGLI Program contract, taxes are not limited to those in effect as of the contract date, but

shall include any taxes enacted, modified, or repealed, by legislative, judicial, or administrative means, during the contract year.

Subpart 2129.3—State and Local Taxes

2129.302 Application of State and local taxes to the Government.

(a) 5 U.S.C. 8714(c)(1) prohibits the imposition of taxes, fees, or other monetary payment on FEGLI Program premiums by any State, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision or governmental authority of those entities.

(b) Paragraph (a) of this section shall not be construed to exempt the contractor from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by it from business conducted under the FEGLI Program if the tax, fee, or payment is applicable to a broad range of business activity.

2129.305 State and local tax exemptions.

(a) FAR 29.305 is modified for the FEGLI Program by substituting paragraph (b) of this section in the place of paragraph (b) of FAR 29.305.

(b) *Furnishing proof of exemption.* If a reasonable basis to sustain a claimed exemption exists, the seller will be furnished evidence of exemption if requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer.

Subpart 2129.4—Contract Clauses

2129.401 Domestic contracts.

2129.401-70 FEGLI Program contract clauses.

The fixed-price contract clauses in FAR subpart 29.4 are inappropriate for the FEGLI Program because of the limited cost-redetermination of FEGLI Program contracts. The clauses at FAR 52.229-1, 52.229-2, 52.229-3, and

52.229-4 shall not be inserted into FEGLI Program contracts.

PART 2131—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 2131.1—Applicability

Sec.

2131.103 Contracts with commercial organizations.

2131.109 Advance agreements.

Subpart 2131.2—Contracts With Commercial Organizations

2131.201 General.

2131.201-5 Credits.

2131.203 Indirect costs.

2131.205 Selected costs.

2131.205-1 Public relations and advertising costs.

2131.205-3 Bad debts.

2131.205-6 Compensation for personal services.

2131.205-32 Precontract costs.

2131.205-38 Selling costs.

2131.205-41 Taxes.

2131.205-43 Trade, business, technical and professional activity costs.

2131.205-70 Major subcontractor service charge.

2131.205-71 Reinsurer administrative expense costs.

2131.270 Contract clauses.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40378, July 28, 1993, unless otherwise noted.

Subpart 2131.1—Applicability

2131.103 Contracts with commercial organizations.

The contracting officer shall incorporate the cost principles and procedures of FAR subpart 31.2 and this part by reference in all FEGLI Program contracts because of the nature of a fixed price with limited cost redetermination plus fixed fee contract.

2131.109 Advance agreements.

FAR 31.109 is applicable to FEGLI Program contracts, except that precontract costs and nonrecurring costs that exceed \$25,000 shall not be allowed in the absence of an advance agreement.

Subpart 2131.2—Contracts With Commercial Organizations

2131.201 General.

2131.201-5 Credits.

The provisions of FAR 31.201-5 shall apply to income, rebates and other credits resulting from benefit payments that include, but are not limited to—

(a) Uncashed and returned checks.

(b) Refunds attributable to litigation with regard to payments of FEGLI Program life insurance monies.

(c) Erroneous benefit payment, refunds, overpayment, and duplicate payment recoveries.

(d) Escheatments.

2131.203 Indirect costs.

The provisions of FAR 31.203 apply to the allocation of indirect costs by means of a “dividend or retention formula.”

2131.205 Selected costs.

2131.205-1 Public relations and advertising costs.

The provisions of FAR 31.205-1 shall be modified to include the following:

(a) Costs of media messages are allowable if approved by the contracting officer and all of the following criteria are met:

(1) The primary objective of the message is to disseminate information on general health and fitness or encouraging healthful lifestyles;

(2) The costs of the contractor’s messages are allocated to all underwritten and non-underwritten lines of business; and

(3) The contracting officer approves the total dollar amount of the contractor’s messages to be charged to the FEGLI Program in advance of the policy year.

(b) Costs of media messages that inform enrollees about the FEGLI Program are allowable if approved by the contracting officer.

(c) In those instances where contracting officer approval of the total dollar amount is not solicited in advance, it is incumbent upon the contractor to show the contracting officer, for subsequent approval, that the costs

Office of Personnel Management

2131.205-41

are reasonable and do not unduly burden the administrative cost to the contract.

(d) Costs of messages that are intended to, or which have the primary effect of, calling favorable attention to the contractor or subcontractor for the purpose of enhancing its overall image or selling its product or services are not allowable.

2131.205-3 Bad debts.

Erroneous benefit payments. If the contractor or OPM determines that a FEGLI Program benefit has been paid in error for any reason, the contractor shall make a diligent effort to recover such erroneous payment from the recipient. The contracting officer shall allow an unrecovered erroneous payment to be charged to the contract provided the contractor demonstrates that the recovery of the erroneous payment was attempted in accordance with a system that is approved under 2146.270(b) and that either a diligent effort was made to recover the erroneous overpayment or it would not be cost effective to recover the erroneous overpayment. The contractor's compliance with a system that is approved under 2146.270(b) will be deemed to be a diligent effort to recover the erroneous overpayment.

2131.205-6 Compensation for personal services.

FAR 31.205-6 is supplemented as follows: Overtime on a FEGLI Program contract normally would meet the conditions specified in FAR 22.103. Advance approval of the contracting officer is not required for overtime, extra-pay shifts, and multi-shifts.

2131.205-32 Precontract costs.

Precontract costs shall be allowable in accordance with FAR Part 31, but precontract costs that exceed \$25,000 shall not be allowable except to the extent allowable under an advance agreement negotiated in accordance with 2131.109.

2131.205-38 Selling costs.

Selling costs are not allowable costs to FEGLI contracts except to the extent that they are attributable to conducting contract negotiations with the

Government and for liaison activities involving ongoing contract administration, including the conduct of informational and enrollment activities as directed by the contracting officer.

2131.205-41 Taxes.

(a) FAR 31.205-41, as modified in paragraphs (b) through (e), is applicable to contracts in the FEGLI Program.

(b) As long as 5 U.S.C. 8714(c) or other Federal law prohibits the imposition of taxes, fees, or other monetary payments on FEGLI Program premiums by any State, the District of Columbia, the Commonwealth of Puerto Rico, or any other political subdivision or governmental authority of those entities, payment of such preempted tax is an unallowable expense under FAR 31.205-41(b)(3).

(c) Paragraph (b)(1) of FAR 31.205-41 is not applicable to the FEGLI Program.

(d) Notwithstanding any other provision in FAR 31.205-41, the portion of the contractor's income or excess profits taxes allocated to the FEGLI Program, except those allocated to the risk charge or the service charge, are allowable costs under the FEGLI Program, including any income or excess profit taxes that arise from the operation of this paragraph. Income or excess profits taxes allocated to the risk charge or the service charge are not allowable costs.

(e) Notwithstanding any other provision in FAR 31.205-41, an amount equal to the "DAC Tax" is an allowable tax expense under FAR 31.205-41. "DAC Tax" means an amount equal to: (1) the amount of the contractor's Federal, state, and local income tax allocated to payments under the FEGLI Program, less (2) the amount of the contractor's Federal, state, and local income tax allocated to payments under the FEGLI Program computed without regard to the operation of 26 U.S.C. 848, which requires that certain policy acquisition expenses be capitalized over a 60- or 120-month period, plus (3) the amount of the increase, if any, in the contractor's Federal, state, and local income tax that results from the operation of this section 2131.205-41(e).

2131.205-43

2131.205-43 Trade, business, technical and professional activity costs.

(a) FEGLI Program contractors shall seek the advance written approval of the contracting officer for allowability of all or part of the costs associated with trade, business, technical, and professional activities when the allocable costs of such participation to the FEGLI Program will exceed \$2,500 annually and the contractor allocates more than 50 percent of the membership cost of a trade, business, technical, or professional organization to the FEGLI Program.

(b) When approval of costs for membership in an organization is required, the contractor must demonstrate conclusively that membership in such an organization and participation in its activities extend beyond the contractual relationship with OPM, have a reasonable relationship to providing services to FEGLI Program insureds, and that the organization is not engaged in activities such as those cited in FAR 31.205-22 (lobbying costs) for which costs are not allowable.

2131.205-70 Major subcontractor service charge.

In a subcontract for enrollment and eligibility determinations, administration of claims and payment of benefits and any other subcontract for which prior approval is necessary, when costs are determined on the basis of actual costs incurred, any amount that exceeds the allowable cost of a major subcontract (whether entitled service charge, incentive fee, profit, fee, surplus, or any other title) is not allowable under the contract. Amounts which exceed allowable costs may be paid to a major subcontractor only from the risk charge or service charge negotiated between OPM and the contractor.

2131.205-71 Reinsurer administrative expense costs.

A charge of \$500 per policy year per reinsurer of the FEGLI Program as set forth in the contract is an allowable cost when documented through an internal accounting entry of the contractor and actually paid. This amount is deemed to be sufficient to reimburse reinsurers for the minor administrative

48 CFR Ch. 21 (10-1-02 Edition)

expenses incurred in reinsuring the FEGLI Program.

2131.270 Contract clauses.

The clause at 2152.231-70 shall be inserted in all FEGLI Program contracts.

PART 2132—CONTRACT FINANCING

Subpart 2132.1—General

Sec.

2132.170 Recurring premium payments to contractors.

2132.171 Contract clause.

Subpart 2132.6—Contract Debts

2132.607 Tax credit.

2132.617 Contract clause.

Subpart 2132.7—Contract Funding

2132.770 Insurance premium payments and special contingency reserve.

2132.771 Non-commingling of FEGLI Program funds.

2132.772 Contract clause.

Subpart 2132.8—Assignment of Claims

2132.806 Contract clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40379, July 28, 1993, unless otherwise noted.

Subpart 2132.1—General

2132.170 Recurring premium payments to contractors.

OPM and the contractor will concur on an estimate of benefits and administrative costs plus the fixed service or risk charge for the forthcoming contract year, as specified in the contract. The annual premium to the contractor will be determined based on this estimate. The premium will be determined annually and will be provided to the contractor in 12 equal monthly installments due on the first day of each month. Following the close of the contract year, a reconciliation of premiums, benefits, and other costs will be performed as a limited cost redetermination.

Office of Personnel Management

2133.270

2132.171 Contract clause.

The clause at 2152.232-70 shall be inserted in all FEGLI Program contracts.

Subpart 2132.6—Contract Debts

2132.607 Tax credit.

FAR 32.607 has no practical application to FEGLI Program contracts. The statutory provisions at 5 U.S.C. 8707 and 8708 authorize joint enrollee and Government contributions to the Employees' Life Insurance Fund. Because the Fund is comprised of contributions by enrollees as well as the Government, contractors may not offset debts to the Fund by a tax credit that is solely a Government obligation.

2132.617 Contract clause.

The clause at FAR 52.232-17 is modified in FEGLI Program contracts to exclude the parenthetical phrase "(net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481))."

Subpart 2132.7—Contract Funding

2132.770 Insurance premium payments and special contingency reserve.

Insurance premium payments and a special contingency reserve are made available to FEGLI Program contractors in accordance with 5 U.S.C. 8712 and 8714.

2132.771 Non-commingling of FEGLI Program funds.

(a) FEGLI Program funds shall be maintained in such a manner as to be separately identifiable from other assets of the contractor. Cash and investment balances reported on the FEGLI

Program Annual Accounting Statement must be supported by the contractor's books and records.

(b) This requirement may be modified by the contracting officer in accordance with the clause at 2152.232-71 when adequate accounting and other controls are in effect. If the requirement is modified, such modification will remain in effect until rescinded by OPM.

2132.772 Contract clause.

The clause at 2152.232-71 shall be inserted in all FEGLI Program contracts.

Subpart 2132.8—Assignment of Claims

2132.806 Contract clause.

The clause set forth in 2152.232-72 shall be inserted in all FEGLI Program contracts.

PART 2133—PROTESTS, DISPUTES, AND APPEALS

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2133.2—Disputes and Appeals

2133.270 Designation of Board of Contract Appeals.

The Armed Services Board of Contract Appeals [ASBCA] serves as the board of contract appeals for the FEGLI Program. The rules of procedure followed in a dispute shall be those prescribed by the ASBCA.

[58 FR 40379, July 28, 1993]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2137—SERVICE CONTRACTING

Subpart 2137.1—Service Contracts—General

Sec.
2137.102 Policy.
2137.110 Contract clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40380, July 28, 1993, unless otherwise noted.

Subpart 2137.1—Service Contracts—General

2137.102 Policy.

(a) The services under this contract are of vital interest to the Government and must be continued without interruption in the event the contract is terminated.

(b) The contractor shall be reimbursed for all reasonable phase-in and

phase-out costs (i.e., costs incurred within the agreed upon period after contract termination that result from phase-in and phase-out operations). The contractor also shall receive a risk or service charge for the full period after contract termination during which services are continued, not to exceed a pro rata portion of the risk or service charge for the final contract year. The amount of risk or service charge shall be based upon the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress.

2137.110 Contract clause.

The clause at 2152.237-70 shall be inserted in all FEGLI Program contracts in lieu of the clause at 52.237-3 that is prescribed by FAR 37.110(c).

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2143—CONTRACT MODIFICATIONS

Subpart 2143.1—General

Sec.
2143.101 Definitions.

Subpart 2143.2—Change Orders

2143.205 Contract clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40380, July 28, 1993, unless otherwise noted.

Subpart 2143.1—General

2143.101 Definitions.

The effective date of a FEGLI contract modification is as defined in FAR 43.101, except to the extent that the definition conflicts with LIFAR 2101.370.

Subpart 2143.2—Change Orders

2143.205 Contract clause.

The clause at 2152.243-70 shall be inserted in all FEGLI Program contracts in lieu of the clauses in FAR 52.243-1 that are prescribed by FAR 43.205(a).

PART 2144—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 2144.1—General

Sec.
2144.102 Policy.

Subpart 2144.2—Consent to Subcontracts

2144.204 Contract clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40380, July 28, 1993, unless otherwise noted.

Subpart 2144.1—General

2144.102 Policy.

For all FEGLI Program contracts, advance approval shall be required on subcontracts or modifications to subcontracts when the cost of that portion

of the subcontract that is charged the FEGLI Program contract exceeds \$200,000, but only if more than 25 percent of the subcontract cost is charged to the FEGLI Program contract.

Subpart 2144.2—Consent to Subcontracts

2144.204 Contract clause.

The clause set forth at 2152.244-70 shall be inserted in all FEGLI Program contracts.

PART 2146—QUALITY ASSURANCE

Subpart 2146.2—Contract Quality Requirements

Sec.
2146.201 General.
2146.270 FEGLI Program quality assurance requirements.
2146.270-1 Contract clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40380, July 28, 1993, unless otherwise noted.

Subpart 2146.2—Contract Quality Requirements

2146.201 General.

(a) This part prescribes policies and procedures to ensure that services acquired under the FEGLI Program contract conform to the contract's quality requirements.

(b) OPM shall evaluate the contractor's system of internal controls under the quality assurance program required by 2146.270 prior to each contract year and will acknowledge in writing whether or not the system is consistent with the requirements set forth in this Subpart. After the initial review, each annual review may be limited to changes in the contractor's internal control guidelines. However, a limited review does not diminish the contractor's obligation to apply the full internal control system.

2146.270

2146.270 FEGLI Program quality assurance requirements.

(a) The contractor shall develop and apply a quality assurance program specifying procedures for assuring contract quality, as directed by the contracting officer. At a minimum, the program should include procedures to address:

- (1) Accuracy of payments and recovery of overpayments;
- (2) Timeliness of payments to beneficiaries;
- (3) Quality of services and responsiveness to beneficiaries;
- (4) Quality of service and responsiveness to OPM; and
- (5) Detection and recovery of fraudulent claims.

(b) The contractor shall prepare overpayment recovery guidelines to include a system of internal control for approval annually by the contracting officer. The contracting officer may withdraw such approval with 90 days' notice of prospective withdrawal.

(c) The contracting officer may order the correction of a deficiency or a modification in the contractor's services and/or quality assurance program. The contractor shall take the necessary action promptly to implement the contracting officer's order. If the contracting officer orders the correction of a deficiency or a modification of the contractor's services and/or quality assurance program pursuant to this paragraph after the contract year has begun, the costs incurred in correcting the deficiency or making the modification will not be considered to the contractor's detriment in the cost control factor of the service charge [if applicable] for the following contract

48 CFR Ch. 21 (10-1-02 Edition)

year. However, if there is a deficiency, the deficiency itself may be taken into consideration.

2146.270-1 Contract clause.

The clause at 2152.246-70 shall be inserted in all FEGLI Program contracts.

PART 2149—TERMINATION OF CONTRACTS

Sec.

2149.002 Applicability.

Subpart 2149.5—Contract Termination Clauses

2149.505 Other termination clauses.

2149.505-70 FEGLI Program contract termination clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40380, July 28, 1993, unless otherwise noted.

2149.002 Applicability.

(a) *Termination.* (1) Termination of FEGLI Program contracts is controlled by 5 U.S.C. 8709(c) and this chapter. The procedures for termination of FEGLI Program contracts shall be those contained in FAR part 49. For the purpose of this part, terminate means to "discontinue" as used in 5 U.S.C. 8709(c).

(2) A life insurance contract entered into by OPM may be terminated by OPM at any time for default by the contractor. A life insurance contract entered into by OPM may be terminated at the end of the 31st day after default for nonpayment by OPM [see 2152.232-70, Payments].

Office of Personnel Management

2149.505-70

(3) A life insurance contract entered into by OPM may be terminated for convenience of the Government 60 days after the contractor's receipt of OPM's notice to terminate.

(4) The contractor may terminate its contract with OPM at the end of any policy year when notice of intent to terminate is given to OPM in writing at least 60 days prior to the end of the policy year (i.e., no later than July 31).

(b) *Continuation of services.* The services under this contract are of vital interest to the Government and must be continued without interruption in the event the contract is terminated. Consequently, the contract termination procedures contained in this paragraph

must be used in conjunction with 2137.102, 2137.110, and the provisions of the "Continuity of Services" clause at 2152.237-70.

(c) *Settlement.* The procedures for settlement of contracts after they are terminated shall be those contained in FAR Part 49.

Subpart 2149.5—Contract Termination Clauses

2149.505 Other termination clauses.

2149.505-70 FEGLI Program contract termination clause.

The clause in 2152.249-70 shall be inserted in all FEGLI Program contracts.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2152—PRECONTRACT PROVISIONS AND CONTRACT CLAUSES

Sec.

2152.070 Applicable clauses.

Subpart 2152.2—Text of Provisions and Clauses

2152.203-70 Misleading, deceptive, or unfair advertising.
2152.209-70 Certification regarding debarment, suspension, proposed debarment and other responsibility matters during negotiations.
2152.209-71 Certification regarding debarment, suspension, proposed debarment and other responsibility matters.
2152.210-70 Investment income.
2152.210-71 Notice of significant events.
2152.215-70 Contractor records retention.
2152.216-70 Fixed price with limited cost re-determination—risk charge.
2152.216-71 Fixed price with limited cost re-determination—service charge.
2152.224-70 Confidentiality of records.
2152.231-70 Accounting and allowable cost.
2152.232-70 Payments.
2152.232-71 Non-commingling of FEGLI Program funds.
2152.232-72 Approval for assignment of claims.
2152.237-70 Continuity of services.
2152.243-70 Changes.
2152.244-70 Subcontracts.
2152.246-70 Quality assurance requirements.
2152.249-70 Renewal and termination.

Subpart 2152.3—Provision and Clause Matrix

2152.370 Use of the matrix.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c), 48 CFR 1.301.

SOURCE: 58 FR 40381, July 28, 1993, unless otherwise noted.

2152.070 Applicable clauses.

The clauses of FAR subpart 52.2 specified below shall be applicable to FEGLI Program contracts. The most recent edition of the clause in the FAR shall be applied unless otherwise provided in the contract.

SECTION AND CLAUSE TITLE

52.202-1 Definitions
52.203-1 Officials Not to Benefit
52.203-3 Gratuities
52.203-5 Covenant Against Contingent Fees

52.203-6 Restrictions on Subcontractor Sales to the Government
52.203-7 Anti-Kickback Procedures
52.203-9 Requirement for Certificate of Procurement Integrity—Modification
52.203-10 Price or Fee Adjustment for Illegal or Improper Activity
52.203-12 Limitation on Payments to Influence Certain Federal Transactions
52.209-6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment
52.215-1 Examination of Records by Comptroller General
52.215-2 Audit—Negotiation
52.215-22 Price Reduction for Defective Cost or Pricing Data
52.215-24 Subcontractor Cost or Pricing Data
52.215-27 Termination of Defined Benefit Pension Plans
52.215-30 Facilities Capital Cost of Money
52.215-31 Waiver of Facilities Capital Cost of Money
52.215-39 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions
52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns
52.219-13 Utilization of Women-Owned Small Businesses
52.220-3 Utilization of Labor Surplus Area Concerns
52.222-1 Notice to the Government of Labor Disputes
52.222-3 Convict Labor
52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation—General
52.222-21 Certification of NonSegregated Facilities
52.222-22 Previous Contracts and Compliance Reports
52.222-25 Affirmative Action Compliance
52.222-26 Equal Opportunity
52.222-28 Equal Opportunity Preaward Clearance of Subcontracts
52.222-29 Notification of Visa Denial
52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans
52.222-36 Affirmative Action for Handicapped Workers
52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era
52.222-41 Service Contract Act of 1965, as Amended
52.223-2 Clean Air and Water
52.223-6 Drug-Free Workplace
52.227-1 Authorization and Consent
52.227-2 Notice and Assistance

Office of Personnel Management

2152.209-70

- 52.232-9 Limitation on Withholding of Payments
- 52.232-17 Interest
- 52.232-23 Assignment of Claims
- 52.232-28 Electronic Funds Transfer Payment Method
- 52.233-1 Disputes (Alternate I)
- 52.242-1 Notice of Intent to Disallow Costs
- 52.242-13 Bankruptcy
- 52.244-5 Competition in Subcontracting
- 52.245-2 Government Property (Fixed-Price Contracts)
- 52.246-4 Inspection of Services—Fixed Price
- 52.246-25 Limitation of Liability—Services
- 52.247-63 Preference for U.S.-Flag Air Carriers
- 52.249-2 Termination for Convenience of the Government (Fixed-Price)
- 52.249-8 Default (Fixed Price Supply and Service)
- 52.251-1 Government Supply Sources
- 52.252-4 Alterations in Contract
- 52.252-6 Authorized Deviations in Clauses

Subpart 2152.2—Text of Provisions and Clauses

2152.203-70 Misleading, deceptive, or unfair advertising.

As prescribed in 2103.571, insert the following clause:

MISLEADING, DECEPTIVE, OR UNFAIR
ADVERTISING (OCT 1993)

The Contractor agrees that any advertising material authorized and released by the Contractor which mentions the FEGLI Program shall be truthful and not misleading, and shall present an accurate statement of FEGLI Program benefits. The Contractor is prohibited from making incomplete, incorrect comparisons or using disparaging or minimizing techniques to compare its other products or services to the benefits of the FEGLI Program. The Contractor agrees to use its best efforts to assure that its agents are aware of and abide by this provision.

The Contractor agrees to incorporate this clause in all subcontracts as defined at LIFAR 2102.101.

(End of clause)

2152.209-70 Certification regarding debarment, suspension, proposed debarment and other responsibility matters during negotiations.

As prescribed in 2109.409(a), the contracting officer may require a potential contractor to provide the following certification:

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (OCT 1993)

(a)(1) The undersigned certifies, to the best of its knowledge and belief, that—

(i) The undersigned and/or any of its Principals—

(A) Are () are not () presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have () have not (), within a 3-year period preceding this certification, been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(C) Are () are not () presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(2) of this clause.

(ii) The undersigned has () has not (), within a 3-year period preceding this certification, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the undersigned subject to prosecution under section 1001, title 18, United States Code.

(b) The undersigned shall provide immediate written notice to the Contracting Officer if, at any time prior to the contract award, the undersigned learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the actions mentioned in paragraph (a) of this provision exists will not necessarily result in the withholding of an award under a contract under the FEGLI Program. However, the certification, or the undersigned's failure to provide such additional information as requested by the Contracting Officer will be considered in connection with a determination of the undersigned's responsibility under LIFAR subpart 2109.70, Minimum Standards for FEGLI Program Contractors.

2152.209-71

48 CFR Ch. 21 (10-1-02 Edition)

(d) Nothing contained in this certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a). The knowledge and information of the undersigned is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in (a) is a material representation of fact upon which reliance is placed during negotiation of a FEGLI Program contract. If it is later determined that the undersigned knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this certification for default.

(Name of Company)

By: _____

(Signature)

(Name and Title of Signatory)

Date signed: _____

(End of certificate)

2152.209-71 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

As prescribed in 2109.409(b), insert the following clause:

CERTIFICATION BY FEGLI PROGRAM CONTRACTOR REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (OCT 1993)

(a)(1) The Contractor certifies, to the best of its knowledge and belief, that—

(i) The Contractor and/or any of its Principals—

(A) Are () are not () presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have () have not (), within a 3-year period preceding this certification, been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(C) Are () are not () presently indicted for, or otherwise criminally or civilly

charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(2) of this clause.

(ii) The Contractor has () has not (), within a 3-year period preceding this certification, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the Contractor subject to prosecution under section 1001, title 18, United States Code.

(b) The Contractor shall provide immediate written notice to the Contracting Officer if, at any time, the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A Contractor's certification that any of the actions mentioned in the certification exists will not necessarily result in termination of the contract. However, the certification, or the Contractor's failure to provide such additional information as requested by the Contracting Officer will be considered in connection with a determination of the Contractor's responsibility under LIFAR subpart 2109.70, Minimum Standards for FEGLI Program Contractors.

(d) Nothing contained in the certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this section. The knowledge and information of the Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in this section is a material representation of fact upon which reliance is placed by the Contracting Officer in making this contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract for default.

(End of clause)

2152.210-70 Investment income.

As prescribed in 2110.7004(a), insert the following clause:

INVESTMENT INCOME (OCT 1993)

(a) The Contractor shall invest and reinvest all FEGLI Program funds on hand until

Office of Personnel Management

2152.210-71

needed to discharge promptly the obligations incurred under the contract. Within the constraints of safety and liquidity of investments, the Contractor shall seek to maximize investment income.

(b) All investment income earned on FEGLI Program funds shall be credited to the FEGLI Program.

(c) When the Contracting Officer concludes that the Contractor failed to comply with paragraphs (a) or (b) of this clause, the Contractor shall pay to the Office of Personnel Management (OPM) the investment income that would have been earned, at the rate(s) specified in paragraph (d) of this clause, had it not been for the Contractor's noncompliance. "Failed to comply with paragraphs (a) or (b)" means: (1) Making any charges against the contract which are not allowable, allocable, or reasonable; or (2) failing to credit any income due the contract and/or failing to place funds on hand, including premium payments and payments from OPM not needed to discharge promptly the obligations incurred under the contract, tax refunds, credits, deposits, investment income earned, uncashed checks, or other amounts owed OPM in income-producing investments and accounts.

(d)(1) Investment income lost as a result of unallowable, unallocable, or unreasonable charges against the contract shall be paid from the 1st day of the contract term following the contract term in which the unallowable charge was made and shall end on the earlier of: (i) The date the amounts are returned to OPM; (ii) the date specified by the Contracting Officer; or, (iii) the date of the Contracting Officer's Final Decision.

(2) Investment income lost as a result of failure to credit income due the contract or failure to place funds on hand in income-producing investments and accounts shall be paid from the date the funds should have been invested or appropriate income was not credited and shall end on the earlier of: (i) The date the amounts are returned to OPM; (ii) the date specified by the Contracting Officer; or, (iii) the date of the Contracting Officer's Final Decision.

(3) The Contractor shall credit to the FEGLI Program income that is due in accordance with this clause. All amounts payable shall bear lost investment income compounded semiannually at the rate established by the Secretary of the Treasury as provided in section 12 of the Contract Disputes Act of 1978 (Pub. L. 95-563), *during* the periods specified in paragraphs (d)(1) and (d)(2).

(4) All amounts due and unpaid *after* the periods specified in paragraphs (d)(1) and (d)(2) shall bear simple interest at the rate applicable for each 6-month period as fixed by the Secretary of the Treasury until the amount is paid [see FAR 32.614-1].

(End of clause)

2152.210-71 Notice of significant events.

As prescribed in 2110.7004(b), insert the following clause:

NOTICE OF SIGNIFICANT EVENTS (OCT 1993)

(a) The Contractor agrees to notify OPM of any significant event within 10 working days after the Contractor becomes aware of it. As used in this section, a "significant event" is any occurrence of anticipated occurrence that might reasonably be expected to have a material effect upon the Contractor's ability to meet its obligations under this contract, including, but not limited to, any of the following:

(1) Disposal of 25 percent or more of the Contractor's assets within a six-month period;

(2) Termination or modification of any contract or subcontract if such termination or modification might have a material effect on the Contractor's obligations under this contract;

(3) Loss of 20 percent or more of FEGLI Program reinsurers in a policy year;

(4) The imposition of, or notice of intent to impose, a receivership, conservatorship, or special regulatory monitoring;

(5) The withdrawal of, or notice of intent to withdraw, by any State, its license to do business or any other change of status under Federal or State law;

(6) The Contractor's default on a loan or other financial obligation;

(7) Any actual or potential labor dispute that delays or threatens to delay timely performance or substantially impairs the functioning of the Contractor's facilities or facilities used by the Contractor in the performance of the contract;

(8) Any change in its charter, constitution, or by-laws which affects any provision of this contract or the Contractor's participation in the Federal Employees' Group Life Insurance Program;

(9) Any significant changes in policies and procedures or interpretations of the contract which would affect the benefits payable under the contract or the costs charged to the contract;

(10) Any fraud, embezzlement or misappropriation of FEGLI Program funds; or

(11) Any written exceptions, reservations or qualifications expressed by the independent accounting firm (which ascribes to the standards of the American Institute of Certified Public Accountants) contracted with by the Contractor to provide an opinion on the annual accounting statements required by OPM for the FEGLI Program.

(b) Upon learning of a significant event, OPM may institute action, in proportion to the seriousness of the event, to protect the

2152.215-70

interest of insureds, including, but not limited to—

- (1) Directing the Contractor to take corrective action;
 - (2) Making a downward adjustment to the weight in the “Contractor Performance” factor of the service charge; or,
 - (3) Withholding payments of the service charge.
- (c) Prior to taking action as described in paragraph (b) of this clause, OPM will notify the Contractor and offer an opportunity to respond.

(d) The Contractor agrees to insert this clause in any subcontract or subcontract modification if the amount of the subcontract or modification that is charged to the FEGLI Program exceeds \$200,000, but only if more than 25 percent of the subcontract cost is charged to the FEGLI contract.

(End of clause)

2152.215-70 Contractor records retention.

As prescribed in 2115.106-270, insert the following clause:

CONTRACTOR RECORDS RETENTION (OCT 1993)

Notwithstanding the provisions of FAR 52.215-2(d), “Audit-Negotiation,” the Contractor will retain and make available all records applicable to a contract term that support the annual statement of operations for a period of 5 years after the end of the contract term to which the records relate. Individual enrollee and/or beneficiary claim records shall be maintained for 10 years after the end of the policy year to which the claim records relate.

(End of clause)

2152.216-70 Fixed price with limited cost redetermination—risk charge.

As prescribed in 2116.270-1(a), insert the following clause when a risk charge is negotiated:

FIXED PRICE WITH LIMITED COST REDETERMINATION PLUS FIXED FEE CONTRACT—RISK CHARGE (OCT 1993)

- (a) This is a fixed price with limited cost redetermination plus fixed fee contract, with the fixed fee in the form of a risk charge.
- (b) OPM shall pay the Contractor the risk charge specified in Appendix _____ for the risk assumed in performing this contract.

(End of clause)

48 CFR Ch. 21 (10-1-02 Edition)

2152.216-71 Fixed price with limited cost redetermination—service charge.

As prescribed in 2116.270-1(b), insert the following clause when a service charge is negotiated:

FIXED PRICE WITH LIMITED COST REDETERMINATION PLUS FIXED FEE CONTRACT—SERVICE CHARGE (OCT 1993)

- (a) This is a fixed price with limited cost redetermination plus fixed fee contract, with the fixed fee in the form of a service charge.
- (b) OPM shall pay the Contractor the service charge specified in Appendix _____.

(End of clause)

2152.224-70 Confidentiality of records.

As prescribed in 2124.104-70, insert the following clause:

CONFIDENTIALITY OF RECORDS (OCT 1993)

- (a) The Contractor shall use the personal data on employees and annuitants that is provided by agencies and OPM, including social security numbers, for only those routine uses stipulated for the data and published annually in the FEDERAL REGISTER as a part of OPM’s notice of systems of records.
- (b) The Contractor shall also hold all medical records, evidence of insurability for insurance coverage, designations of beneficiaries, amounts of insurance, and information relating thereto, of the insured and family members confidential except for disclosure as follows:
 - (1) as may be reasonably necessary for the administration of this contract;
 - (2) as authorized by the insured or his or her estate;
 - (3) as necessary to permit Government officials having authority to investigate and prosecute alleged civil or criminal actions; and
 - (4) as necessary to audit the contract.

(End of clause)

2152.231-70 Accounting and allowable cost.

As prescribed in 2131.270, insert the following clause:

ACCOUNTING AND ALLOWABLE COST (OCT 1993)

(a) *Annual Accounting Statement.* (1) The Contractor shall prepare annually an accounting statement summarizing the financial results of the FEGLI Program for the previous contract year. This statement shall be prepared in accordance with the requirements issued annually by OPM and shall be due to OPM in accordance with a date established by those requirements.

Office of Personnel Management

2152.232-70

(2) The Contractor shall have the most recent financial statement for the FEGLI Program audited by an accounting firm that ascribes to the standards of the American Institute of Certified Public Accountants. The report shall be submitted to OPM along with the annual accounting statement.

(3) Based on the results of either the independent audit or a Government audit, the annual accounting statements for the FEGLI Program may be (i) adjusted by amounts found not to constitute properly allocable or allowable costs; or (ii) adjusted for prior overpayments or underpayments.

(b) Definition of costs. (1) The allowable costs chargeable to the contract for a policy year shall be the actual, necessary, reasonable, and allocable amounts incurred with proper justification and accounting support, determined in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) and Subpart 2131.2 of the Federal Employees Group Life Insurance Program Acquisition Regulation (LIFAR) applicable on October 1 of each year, and the terms of this contract.

(2) In the absence of specific contract terms to the contrary, contract costs shall be classified in accordance with the following criteria:

(i) Benefits. Claims costs consist of payments made and costs incurred for life insurance and accidental death and dismemberment insurance on behalf of FEGLI Program subscribers, including interest paid on delayed claims, less any overpayments (subject to the terms of 2131.205-3), refunds, or other credits received.

(ii) Administrative expenses. Administrative expenses consist of all allocable, allowable, and reasonable expenses incurred in the adjudication of beneficiary claims or incurred in the Contractor's overall operation of the business. Unless otherwise provided in the contract, FAR, or LIFAR, administrative expenses include, but are not limited to, taxes, insurance and reinsurance premiums, the cost of investigation and settlement of policy claims, the cost of maintaining files regarding payment of claims, and legal expenses incurred in the litigation of benefit payments. Administrative expenses exclude the expenses related to investment income in paragraph (b)(2)(iii) of this clause.

(iii) Investment income. Investment income represents the amount earned by the Contractor after deducting reasonable, necessary, and properly allocable investment expenses as a result of investing of FEGLI Program funds. The direct or allocable indirect expenses incurred with respect to the investment of Program funds, such as brokerage fees, are netted against investment income earned rather than as part of administrative expenses.

(c) Certification of Annual Accounting Statement. (1) The Contractor shall certify the annual accounting statement in the form set

forth in paragraph (c)(2) of this clause. The certificate shall be signed by the chief executive officer for the Contractor's FEGLI Program operations and the chief financial officer for the Contractor's FEGLI Program operations and shall be returned with the annual accounting statement.

(2) The certification required shall be in the following form:

CERTIFICATION OF ANNUAL ACCOUNTING STATEMENT

This is to certify that I have reviewed this accounting statement and, to the best of my knowledge and belief, attest that:

1. The statement was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this policy year in conformity with those guidelines;

2. The costs included in the statement are allowable and allocable in accordance with the terms of the contract and with the cost principles of the Federal Employees' Group Life Insurance Program Acquisition Regulation (LIFAR) and the Federal Acquisition Regulation (FAR);

3. Income, overpayments, refunds, and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the statement.

Contractor Name: _____ (Chief Executive Officer for FEGLI Operations)

Date signed: _____ (Chief Financial Officer for FEGLI Operations)

Date signed: _____ (Type or print and sign) (End of Certificate)

(End of clause)

2152.232-70 Payments.

As prescribed in 2132.171, insert the following clause:

PAYMENTS (OCT 1993)

(a) OPM will provide to the Contractor, in full settlement of its obligations under this contract, subject to adjustment based on actual claims and administrative cost or for Contractor fraud, a fixed premium once per month on the first business day of the month. The premium will be determined by an estimate of costs for the contract year as provided in Section _____, and will be redetermined annually. In addition, an annual reconciliation of premiums and actual costs will be performed, and additional payment by OPM or reimbursement by the Contractor will be paid as necessary.

2152.232-71

(b) If OPM fails to provide the premium in full by the due date, a grace period of 31 days shall be granted to OPM for providing any premium due, unless OPM has previously given written notice to the Contractor that the contract is to be discontinued on the premium due date. The contract shall continue in force during the grace period.

(c) If OPM fails to provide any premiums within the grace period, the contract shall be discontinued at the end of the 31st day of the grace period, unless the Contractor and OPM agree to continue the contract. OPM shall be liable to the Contractor for all premiums then due and unpaid. If during the grace period OPM presents written notice to the Contractor that the contract is to be discontinued before the expiration of the grace period, the contract shall be discontinued the later of the date of receipt of such written notice by the Contractor or the date specified by OPM for discontinuance. OPM shall be liable to the Contractor for all premiums then due and unpaid.

(d) The specific premium rates, charges, allowances and limitations applicable to the contract are set forth in 5 CFR Parts 870 through 874, 48 CFR chapter 1, LIFAR, and this contract.

(e) In accordance with FAR 52.243-2, if a change is made to the contract that increases or decreases the cost of performance of the work under this contract, the Contracting Officer shall make an equitable adjustment to the estimate on which the monthly premiums are based.

(f) In the event this contract is terminated in accordance with LIFAR Part 2149, the special contingency reserve held by the Contractor shall be available to pay the necessary and proper charges against this contract after other Program assets held by the Contractor are exhausted.

(End of clause)

2152.232-71 Non-commingling of FEGLI Program funds.

As prescribed in 2132.772, insert the following clause:

NON-COMMINGLING OF FUNDS (OCT 1993)

(a) FEGLI Program funds shall be maintained in such a manner as to be separately identifiable from other assets of the Contractor. Cash and investment balances reported on the FEGLI Program Annual Accounting Statement must be supported by the Contractor's books and records.

(b) The Contractor may request a modification of this requirement from the Contracting Officer. The modification shall be requested in advance and the Contractor shall demonstrate that accounting techniques have been established that will clearly measure FEGLI Program cash and invest-

48 CFR Ch. 21 (10-1-02 Edition)

ment income (i.e., subsidiary ledgers). Reconciliations between amounts reported and actual amounts shown in accounting records shall be provided as supporting schedules to the Annual Accounting Statements.

(End of clause)

2152.232-72 Approval for assignment of claims.

As prescribed in 2132.806, insert the following clause:

APPROVAL FOR ASSIGNMENT OF CLAIMS (OCT 1993)

(a) The Contractor shall not make any assignment of FEGLI Program funds under the Assignment of Claims Act without the prior written approval of the Contracting Officer.

(b) Unless a different period is specified in the Contracting Officer's written approval, an assignment of FEGLI Program funds shall be in force only for a period of 1 year from the date of the Contracting Officer's approval. However, assignments may be renewed upon their expiration.

(End of clause)

2152.237-70 Continuity of services.

As prescribed in 2137.110, insert the following clause:

CONTINUITY OF SERVICE (OCT 1993)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration or termination, including termination by the Contractor, a successor, either the Government or another contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in and phase-out services for up to 10 months after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in and phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in and phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job

to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct onsite interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract termination that result from phase-in and phase-out operations) and a risk or service charge not to exceed a pro rata portion of the risk or service charge under this contract. The amount of profit shall be based upon the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress. In setting the final profit figure, obstacles overcome by the Contractor during the phase-in and phase-out period will be taken into consideration.

(End of clause)

2152.243-70 Changes.

As prescribed in 2143.205, insert the following clause:

CHANGES (OCT 1993)

(a) Except as provided in paragraph (f) of this clause, the Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e.: hours of the day, days of the week, etc.).
- (3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, or the Contractor's liability under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause with 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall

have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(f) The Contracting Officer shall not make any changes pursuant to paragraph (a) of this clause to conform this contract to any amendment in the LIFAR before the effective date of the amendment as provided for in LIFAR 2101.370.

(End of clause)

2152.244-70 Subcontracts.

As prescribed by 2144.204, insert the following clause:

SUBCONTRACTS (OCT 1993)

(a) The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract or subcontract modification, or as otherwise specified by this contract, when the cost of that portion of the subcontract that is charged the FEGLI Program contract exceeds \$200,000 and more than 25 percent of the subcontract cost is charged to the FEGLI Program contract.

(b) The advance notification required by paragraph (a) of this clause shall include the following information:

- (1) A description of the supplies or services to be subcontracted;
- (2) Identification of the type of subcontract to be used;
- (3) Identification of the proposed subcontract and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;
- (4) The proposed subcontract price and the Contractor's cost or price analysis;
- (5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract; and

(7) A negotiation memorandum reflecting—

- (i) The principal elements of the subcontract price negotiations;
 - (ii) The most significant consideration controlling establishment of initial or revised prices;
 - (iii) The reason cost or pricing data were or were not required;
 - (iv) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(v) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(vi) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) of this clause. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.

(d) The Contracting Officer may waive the requirement for advance notification and consent required by paragraph (a), (b), and (c) of this clause where the Contractor and subcontractor submit an application or renewal as a contractor team arrangement as defined in FAR subpart 9.6 and—

(1) The Contracting Officer evaluated the arrangement during negotiation of the contract or contract renewal; and

(2) The subcontractor's price and/or costs were included in the plan's rates that were reviewed and approved by the Contracting Officer during negotiations of the contract or contract renewal.

(e) Unless the consent or approval specifically provides otherwise, consent by the Contracting Office to any subcontract shall not constitute a determination (1) of the acceptability of any subcontract terms or conditions; (2) of the allowability of any cost under this contract; or (3) to relieve the Contractor of any responsibility for performing this contract.

(f) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under cost reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.903(d). Any profit or fee payable under a subcontract shall be in accordance with the provisions of Section _____, Service Charge.

(g) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract with respect to which the Contractor may be

entitled to reimbursement from the Government.

(End of clause)

2152.246-70 Quality assurance requirements.

As prescribed by 2146.270-1 insert the following clause:

QUALITY ASSURANCE REQUIREMENTS (OCT 1993)

(a) The Contractor shall develop and apply a quality assurance program as directed by the Contracting Officer pursuant to LIFAR 2146.270.

(b) The Contractor shall keep complete records of its quality assurance procedures and the results of their implementation and make them available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Contracting Officer or his or her representative has the right to inspect and test all services called for by the contract, to the extent practicable, at all times and places during the term of the contract and for as long afterward as the contract requires. The Contracting Officer or his or her representative shall perform any inspections and tests in a manner that will not unduly delay the work.

(End of clause)

2152.249-70 Renewal and termination.

As prescribed in 2149.505-70, insert the following clause:

RENEWAL AND TERMINATION (OCT 1993)

(a) This contract renews automatically each October 1st, unless written notice of termination is given by the Contractor not less than 60 calendar days before the renewal date.

(b) This contract may be terminated by OPM at any time for default by the Contractor. This contract terminates at the end of the 31st day after default for nonpayment by the Government, unless the Contractor and OPM agree to continue the contract.

(c) This contract may be terminated for convenience of the Government 60 days after the Contractor's receipt of OPM's written notice of termination.

(d) Upon termination of the contract, the Contractor agrees to assist OPM with an orderly and efficient transition to a successor in accordance with LIFAR 2137.102, 2137.110, and the provisions of the "Continuity of Services" clause at 2152.237-70.

(e) After receipt of a termination notice, the prime Contractor shall, unless directed otherwise by the Contracting Officer, terminate all subcontracts to the extent that they

Office of Personnel Management

2152.370

relate to the performance of the FEGLI Program contract. The failure of the prime Contractor to include an appropriate termination clause in any subcontract, or to exercise the clause rights, shall not affect the Contracting Officer's right to require the termination of the subcontract; or increase the obligation of the Government beyond what it would have been if the subcontract had contained an appropriate clause.

(End of clause)

Subpart 2152.3—Provision and Clause Matrix

2152.370 Use of the matrix.

(a) The matrix in this section lists the FAR and LIFAR clauses to be used

with the FEGLI Program contract. The clauses are to be incorporated in the contract in full text.

(b) Certain contract clauses are mandatory for FEGLI Program contracts. Other clauses are to be used only when made applicable by pertinent sections of the FAR or LIFAR. An "M" in the "Use Status" column indicates that the clause is mandatory. An "A" indicates that the clause is to be used only when the applicable conditions are met.

FEGLI PROGRAM CLAUSE MATRIX

| Clause No. | Text reference | Title | Use status |
|---------------|------------------|---|------------|
| FAR 52.202-1 | FAR 2.2 | Definitions | M |
| FAR 52.203-1 | FAR 3.102-2 | Officials Not to Benefit | M |
| FAR 52.203-3 | FAR 3.202 | Gratuities | M |
| FAR 52.203-5 | FAR 3.404(c) | Covenant Against Contingent Fees | M |
| FAR 52.203-6 | FAR 3.503-2 | Restrictions of Subcontractor Sales to the Government .. | M |
| FAR 52.203-7 | FAR 3.502-3 | Anti-Kickback Procedures | M |
| FAR 52.203-9 | FAR 3.104-10(b) | Requirement for Certificate of Procurement Integrity— Modification. | M |
| FAR 52.203-12 | FAR 3.808 | Limitation on Payments to Influence Certain Federal Transactions. | M |
| 2152.203-70 | 2103.571 | Misleading, Deceptive, or Unfair Advertising | M |
| FAR 52.209-6 | FAR 9.409(b) | Protecting the Government's Interest When Subcon- tracting With Contractors Debarred, Suspended, or Proposed for Debarment. | M |
| 2152.209-71 | 2109.409(b) | Certification Regarding Debarment, Suspension, Pro- posed Debarment, and Other Responsibility Matters. | M |
| 2152.210-70 | 2110.7004(a) | Investment Income | M |
| 2152.210-71 | 2110.7004(b) | Notice of Significant Events | M |
| FAR 52.215-1 | FAR 15.106-1(b) | Examination of Records by Comptroller General | M |
| FAR 52.215-2 | FAR 15.106-2(b) | Audit—Negotiation | M |
| FAR 52.215-22 | FAR 15.804-8(a) | Price Reduction for Defective Cost or Pricing Data | M |
| FAR 52.215-24 | FAR 15.804-8(c) | Subcontractor Cost or Pricing Data | M |
| FAR 52.215-27 | FAR 15.804-8(e) | Termination of Defined Benefit Pension Plans | M |
| FAR 52.215-30 | FAR 15.904 | Facilities Capital Cost of Money | M |
| FAR 52.215-31 | FAR 15.904 | Waiver of Facilities Capital Cost of Money | A |
| FAR 52.215-39 | FAR 15.804-8(f) | Reversion or Adjustment of Plans for Post-retirement Benefits (PRB) Other Than Pensions. | A |
| 2152.215-70 | 2115.106-270 | Contractor Records Retention | M |
| 2152.216-70 | 2116.270-1(a) | Fixed Price With Limited Cost Redetermination—Risk Charge. | A |
| 2152.216-71 | 2116.270-1(b) | Fixed Price With Limited Cost Redetermination—Service Charge. | A |
| FAR 52.219-8 | FAR 19.708(a) | Utilization of Small Business Concerns and Small Dis- advantaged Business Concerns. | M |
| FAR 52.219-13 | FAR 19.902 | Utilization of Women-Owned Small Businesses | M |
| FAR 52.220-3 | FAR 21.302(a) | Utilization of Labor Surplus Area Concerns | M |
| FAR 52.222-1 | FAR 22.103-5(a) | Notice to the Government of Labor Disputes | M |
| FAR 52.222-3 | FAR 22.202 | Convict Labor | M |
| FAR 52.222-4 | FAR 22.305(a) | Contract Work Hours and Safety Standards Act—Over- time Compensation—General. | M |
| FAR 52.222-21 | FAR 22.810(a)(1) | Certification of NonSegregated Facilities | M |
| FAR 52.222-22 | FAR 22.810(a)(2) | Previous Contracts and Compliance Reports | M |
| FAR 52.222-25 | FAR 22.810(d) | Affirmative Action Compliance | M |
| FAR 52.222-26 | FAR 22.810(e) | Equal Opportunity | M |
| FAR 52.222-28 | FAR 22.810(g) | Equal Opportunity Preaward Clearance of Subcontracts | M |
| FAR 52.222-29 | FAR 22.810(h) | Notification of Visa Denial | A |
| FAR 52.222-35 | FAR 22.1308(a) | Affirmative Action for Special Disabled and Vietnam Era Veterans. | M |

FEGLI PROGRAM CLAUSE MATRIX—Continued

| Clause No. | Text reference | Title | Use status |
|---------------|-------------------------------------|--|------------|
| FAR 52.222-36 | FAR 22.1408(a) | Affirmative Action for Handicapped Workers | M |
| FAR 52.222-37 | FAR 22.1308(b) | Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era. | M |
| FAR 52.223-2 | FAR 23.105(b) | Clean Air and Water | A |
| FAR 52.223-6 | FAR 23.505(c) | Drug-Free Workplace | M |
| 2152.224-70 | 2124.104-70 | Confidentiality of Records | M |
| FAR 52.227-1 | FAR 27.201-2(a) | Authorization and Consent | M |
| FAR 52.227-2 | FAR 27.202-2 | Notice and Assistance | A |
| FAR 52.228-7 | FAR 28.311-2 Modification: 2128.370 | Insurance—Liability to Third Persons | M |
| 2152.231-70 | 2131.270 | Accounting and Allowable Cost | M |
| FAR 52.232-9 | FAR 32.111(c)(2) | Limitation on Withholding of Payments (Modified) | M |
| FAR 52.232-17 | FAR 32.617 Modification: 2132.617 | Interest | M |
| FAR 52.232-23 | FAR 32.806(a)(1) | Assignment of Claims | A |
| FAR 52.232-28 | FAR 32.908(d) | Electronic Funds Transfer Payment Method | M |
| 2152.232-70 | 2132.171 | Payments | M |
| 2152.232-71 | 2132.772 | Non-Commingling of FEGLI Program Funds | M |
| 2152.232-72 | 2132.806 | Approval for Assignment of Claims | M |
| FAR 52.233-1 | FAR 33.214 | Disputes (Alternate I) | M |
| 2152.237-70 | 2137.110 | Continuity of Services | M |
| FAR 52.242-1 | FAR 42.802 | Notice of Intent to Disallow Costs | M |
| FAR 52.242-13 | FAR 42.903 | Bankruptcy | M |
| 2152.243-70 | 2143.205 | Changes—FEGLI Program Contract | M |
| FAR 52.244-5 | FAR 44.204(e) | Competition in Subcontracting | M |
| 2152.244-70 | 2144.204 | Subcontracts | M |
| 4FAR 52.245-2 | FAR 45.106(b)(1) | Government Property (Fixed-Price Contracts) | M |
| FAR 52.246-4 | FAR 46.304 | Inspection of Services—Fixed-Price | M |
| FAR 52.246-25 | FAR 46.805(a)(4) | Limitation of Liability—Services | M |
| 2152.246-70 | 2146.270-1 | Quality Assurance Requirements | M |
| FAR 52.247-63 | FAR 47.405 | Preference for U.S.-Flag Air Carriers | M |
| FAR 52.249-2 | FAR 49.502(b)(1) | Termination for Convenience of the Government (Fixed Price). | M |
| FAR 52.249-8 | FAR 49.504(a)(1) | Default (Fixed-Price Supply and Service) | M |
| FAR 52.249-14 | FAR 49.505(d) | Excusable Delays | M |
| 2152.249-70 | 2149.505-70 | Renewal and Termination | M |
| FAR 52.251-1 | FAR 51.107 | Government Supply Sources | A |
| FAR 52.252-4 | FAR 52.107(d) | Alterations in Contract | M |
| FAR 52.252-6 | FAR 52.107(f) | Authorized Deviations in Clauses | M |