

## SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

### PART 1614—SEALED BIDDING

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

#### 1614.000 Applicability.

FAR part 14 has no practical application to FEHBP contracts in view of the statutory exemption provided by 5 U.S.C. 8902.

[52 FR 16039, May 1, 1987]

### PART 1615—CONTRACTING BY NEGOTIATION

Sec.

1615.070 Negotiation authority.

#### Subpart 1615.1—Source Selection Processes and Techniques.

1615.170 Applicability.

#### Subpart 1615.2—Solicitations and Receipt of Proposals and Information

1615.270 Applicability.

#### Subpart 1615.3—Source Selection

1615.370 Applicability.

#### Subpart 1615.4—Contract Pricing

1615.402 Pricing policy.

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1615.406-2 Certificate of accurate cost or pricing data for community-rated carriers.

1615.407-1 Rate reduction for defective pricing or defective cost or pricing data.

1615.470 Carrier investment of FEHB funds.

1615.470-1 Investment income clause.

#### Subparts 1615.8–1615.9 [Reserved]

#### Subpart 1615.70—Audit and Records—Negotiation

1615.7001 Audit and records.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16040, May 1, 1987, unless otherwise noted.

#### 1615.070 Negotiation authority.

The authority to negotiate FEHB contracts is conferred by 5 U.S.C. 8902.

[70 FR 31379, June 1, 2005]

#### Subpart 1615.1—Source Selection Processes and Techniques.

#### 1615.170 Applicability.

FAR Subpart 15.1 has no practical application to the FEHB Program because prospective contractors (carriers) are considered for inclusion in the FEHB Program according to criteria in 5 U.S.C. chapter 89 and 5 CFR part 890 rather than by competition between prospective carriers.

[70 FR 31379, June 1, 2005]

#### Subpart 1615.2—Solicitations and Receipt of Proposals and Information

#### 1615.270 Applicability.

FAR subpart 15.2 has no practical application to the FEHB Program because OPM does not issue formal procurement solicitations to health benefits carriers. Eligible contractors (*i.e.*, qualified health benefits carriers) are identified in accordance with 5 U.S.C. 8903. Offerors voluntarily come forth in accordance with procedures provided in 5 CFR part 890.

[70 FR 31379, June 1, 2005]

#### Subpart 1615.3—Source Selection

#### 1615.370 Applicability.

FAR subpart 15.3 has no practical application to the FEHBP because prospective contractors (carriers) are considered for inclusion in the FEHBP in accordance with criteria provided in 5 U.S.C. chapter 89 and 5 CFR part 890 rather than on the basis of competition between prospective carriers.

[52 FR 16040, May 1, 1987. Redesignated and amended at 70 FR 31380, June 1, 2005]

**Subpart 1615.4—Contract Pricing**

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 70 FR 31380, June 1, 2005, unless otherwise noted.

**1615.402 Pricing policy.**

Pricing of FEHB contracts is governed by 5 U.S.C. 8902(i), 5 U.S.C. 8906, and other applicable law. FAR subpart 15.4 will be implemented by applying its policies and procedures—to the extent practicable—as follows:

(a) For both experience-rated and community-rated contracts for which the FEHB Program premiums for the contract term will be less than the threshold at FAR 15.403-4(a)(1), OPM will not require the carrier to provide cost or pricing data in the rate proposal for the following contract term.

(b) Cost analysis will be used for contracts where premiums and subscription income are determined on the basis of experience rating.

(c)(1) A combination of cost and price analysis will be used for contracts where premiums and subscription income are based on community-rates. For contracts for which the FEHB Program premiums for the contract term will be less than the threshold at FAR 15.403-4(a)(1), OPM will not require the carrier to provide cost or pricing data. The carrier is required to submit only a rate proposal and abbreviated utilization data for the applicable contract year. OPM will evaluate the proposed rates by performing a basic reasonableness test on the information submitted. Rates failing this test will be subject to further review.

(2) For contracts with fewer than 1,500 enrollee contracts for which the FEHB Program premiums for the contract term will be at or above the threshold at FAR 15.403-4(a)(1), OPM will require the carrier to submit its rate proposal, utilization data, and the certificate of accurate cost or pricing data required in 1615.406-2. In addition, OPM will require the carrier to complete the proposed rates form containing cost and pricing data, and the Community-Rate Questionnaire, but will not require the carrier to send these documents to OPM. The carrier will keep the documents on file for

periodic auditor and actuarial review in accordance with 1652.204-70. OPM will perform a basic reasonableness test on the data submitted. Rates that do not pass this test will be subject to further OPM review.

(3) For contracts with 1,500 or more enrollee contracts for which the FEHB Program premiums for the contract term will be at or above the threshold at FAR 15.403-4(a)(1), OPM will require the carrier to provide the data and methodology used to determine the FEHB Program rates. OPM will also require the data and methodology used to determine the rates for the carrier's similarly sized subscriber groups. The carrier will provide cost or pricing data required by OPM in its rate instructions for the applicable contract period. OPM will evaluate the data to ensure that the rate is reasonable and consistent with the requirements in this chapter. If necessary, OPM may require the carrier to provide additional documentation.

(4) Contracts will be subject to a downward price adjustment if OPM determines that the Federal group was charged more than it would have been charged using a methodology consistent with that used for the similarly-sized subscriber groups (SSSGs). Such adjustments will be based on the lower of the two rates determined by using the methodology (including discounts) the carrier used for the two SSSGs.

(5) FEHB Program community-rated carriers will comply with SSSG criteria provided by OPM in the rate instructions for the applicable contract period.

(d) The application of FAR 15.402(b)(2) should not be construed to prohibit the consideration of preceding year surpluses or deficits in carrier-held reserves in the rate adjustments for subsequent year renewals of contracts based, in whole or in part, on cost analysis.

**1615.404-4 Profit.**

(a) When the pricing of FEHB Program contracts is determined by cost analysis, OPM will determine the profit or fee prenegotiation objective (service charge) portion of the contracts by use of a weighted guidelines structured

approach. The service charge so determined will be the total service charge that may be negotiated for the contract and will encompass any service charge (whether entitled service charge, profit, fee, contribution to reserves or surpluses, or any other title) that may have been negotiated by the prime contractor with any subcontractor or underwriter.

(b) OPM will not guarantee a minimum service charge.

**1615.404-70 Profit analysis factors.**

(a) OPM contracting officers will apply a weighted guidelines method in developing the service charge prenegotiation objective for FEHB Program contracts. The following factors, as defined in FAR 15.404-4(d), will be applied to projected incurred claims and allowable administrative expenses:

(1) *Contractor performance.* OPM will consider such elements as the accurate and timely processing of benefit claims and the volume and validity of disputed claims as measures of economical and efficient contract performance. This factor will be judged apart from the contractor's basic responsibility for contract performance and will be a measure of the extent and nature of the contractor's contribution to the FEHB 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 negative weight. Innovations of benefit to the FEHB Program will generally result in a positive weight; documented inattention or indifference to cost control will generally result in a negative weight.

(2) *Contract cost risk.* In assessing the degree of cost responsibility and associated risk assumed by the contractor as a factor to be considered in negotiating profit, OPM will consider such underwriting elements as the availability of margins, group size, enrollment demographics and fluctuation, and the probability of conversion and adverse selection, as well as the extent of financial assistance the carrier renders to the contract. However, the "loss carry forward basis" of experience-rated group insurance practices,

which mitigates contract risk, will likely serve to diminish this profit analysis factor in an overall determination of profit. This factor is intended to provide profit opportunities commensurate with the contractor's share of cost risks only, taking into account elements such as the adequacy and reliability of data for estimating costs.

(3) *Federal socioeconomic programs.* OPM will consider documented evidence of successful, contractor-initiated efforts to support Federal socioeconomic programs such as drug and substance abuse deterrents and concerns of the type enumerated in FAR 15.404-4(d)(iii), as a factor in negotiating profit. This factor will be assessed by considering 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 receive a positive weight; poor support will receive a negative weight.

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

(5) *Cost control.* OPM will consider contractor-initiated efforts such as improved benefit design, cost-sharing features, innovative peer review, or other professional cost containment efforts as a factor in negotiating profit. OPM will use this factor to reward contractors with additional profit opportunities for self-initiated efforts to control contract costs.

(6) *Independent development.* OPM will consider any profit opportunities that may be directly related to relevant independent efforts such as the development of a unique and enhanced customer support system that is of demonstrated value to the FEHB Program and for which developmental costs

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have not been recovered directly or indirectly through allowable administrative expenses. OPM will use this factor to provide additional profit opportunities based upon an assessment of the contractor's investment and risk in developing techniques, methods, and practices having viability to the program at large. OPM will not consider improvements and innovations recognized and rewarded under any of the other profit factors.

(b) The following weight ranges for each factor are used in the weighted guidelines approach:

Profit factor	Weight ranges (percent)
1. Contractor performance .....	-.2 to +.45
2. Contract cost risk* .....	+.02 to +.2
3. Federal socioeconomic programs .....	-.05 to +.05
4. Capital investments .....	0 to +.02
5. Cost control .....	0 to +.35
6. Independent development .....	0 to +.03

\*The contract cost risk factor is subdivided into two parts: group size (.02 to .10) and other risk elements (0 to .10). With respect to the group size element, subweights should be assigned as follows:

Enrollment	Weight (percent)
10,000 or less .....	.06 to .10
10,001-50,000 .....	.05 to .09
50,001-200,000 .....	.04 to .07
200,001-500,000 .....	.03 to .06
500,001 and over .....	.02 to .04

**1615.406-2 Certificate of accurate cost or pricing data for community-rated carriers.**

The contracting officer will require a carrier with a contract meeting the requirements in 1615.402(c)(2) or 1615.402(c)(3) to execute the Certificate of Accurate Cost or Pricing Data contained in this section. A carrier with a contract meeting the requirements in 1615.402(c)(2) will complete the Certificate and keep it on file at the carrier's place of business in accordance with 1652.204-70. A carrier with a contract meeting the requirements in 1615.402(c)(3) will submit the Certificate to OPM along with its rate reconciliation, which is submitted during the first quarter of the applicable contract year.

**48 CFR Ch. 16 (10-1-08 Edition)**

**Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers**

This is to certify that, to the best of my knowledge and belief: (1) The cost or pricing data submitted (or, if not submitted, maintained and identified by the carrier as supporting documentation) to the Contracting officer or the Contracting officer's representative or designee, in support of the \_\_\_\_\_\* FEHB Program rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHB Program contract and are accurate, complete, and current as of the date this certificate is executed; and (2) the methodology used to determine the FEHB Program rates is consistent with the methodology used to determine the rates for the carrier's Similarly Sized Subscriber Groups.

Firm: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date of Execution: \_\_\_\_\_

(End of certificate)

**1615.407-1 Rate reduction for defective pricing or defective cost or pricing data.**

The clause set forth in section 1652.215-70 will be inserted in FEHB Program contracts, at or above the threshold in FAR 15.403-4(a)(1), that are based on a combination of cost and price analysis (community-rated).

**1615.470 Carrier investment of FEHB funds.**

(a) Except for contracts based on a combination of cost and price analysis (community-rated), the carrier is required to invest and reinvest all funds on hand, including any attributable to the special reserve or the reserve for incurred but unpaid claims, exceeding the funds needed to discharge promptly the obligations incurred under the contract.

(b) The carrier is required to credit income earned from its investment of FEHB funds to the special reserve on behalf of the FEHB Program. If a carrier, for any reason, fails to invest excess FEHB funds or to credit any income due to the contract, it will return or credit any investment income lost to OPM or the special reserve.

\*Insert the year for which the rates apply. Normally, this will be the year for which the rates are being reconciled.

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(c) Investment income. Investment income is the net amount earned by the carrier after deducting investment expenses.

### **1615.470-1 Investment income clause.**

The clause set forth in 1652.215-71 will be inserted in all FEHB contracts based on cost analysis.

## **Subparts 1615.8-1615.9 [Reserved]**

### **Subpart 1615.70—Audit and Records—Negotiation**

#### **1615.7001 Audit and records.**

The Contracting officer will modify 52.215-2 in all FEHB Program experience-rated contracts by amending paragraph (g) of that section to replace the words “exceed the simplified acquisition threshold” with “equals or exceeds \$550,000.” This amount shall be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth in Negotiations Act pursuant to 41 U.S.C. 254b(a)(7).

[70 FR 31381, June 1, 2005]

## **PART 1616—TYPES OF CONTRACTS**

### **Subpart 1616.1—Selecting Contract Types**

Sec.

1616.102 Policies.

1616.105 Solicitation provision.

#### **Subpart 1616.70—Negotiated Benefits Contracts**

1616.7001 Clause—contracts based on a combination of cost and price analysis (community rated).

1616.7002 Clause—contracts based on cost analysis (experience rated).

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16041, May 1, 1987, unless otherwise noted.

### **Subpart 1616.1—Selecting Contract Types**

#### **1616.102 Policies.**

All FEHBP contracts shall be negotiated benefits contracts.

[62 FR 47575, Sept. 10, 1997]

#### **1616.105 Solicitation provision.**

FAR 16.105 has no practical application because the statutory provisions of 5 U.S.C. chapter 89 obviate the issuance of solicitations.

### **Subpart 1616.70—Negotiated Benefits Contracts**

SOURCE: 62 FR 47575, Sept. 10, 1997, unless otherwise noted.

#### **1616.7001 Clause—contracts based on a combination of cost and price analysis (community rated).**

The clause at section 1652.216-70 shall be inserted in all FEHBP contracts based on a combination of cost and price analysis (community rated).

#### **1616.7002 Clause—contracts based on cost analysis (experience rated).**

The clause at section 1652.216-71 shall be inserted in all FEHBP contracts based on cost analysis (experience rated).