

1652.204-73 Taxpayer Identification Number.

As prescribed in 1604.970, insert the following clause.

TAXPAYER IDENTIFICATION NUMBER (JAN 2000)

(a) *Definitions. Common parent*, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Carrier is a member.

Taxpayer Identification Number (TIN), as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the Carrier in reporting income tax and other returns.

(b) The Carrier must submit the information required in paragraphs (d) through (f) of this clause to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. The Carrier is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904. The Carrier's failure or refusal to furnish the information will result in payment being withheld until the TIN number is provided.

(c) The Government may use the TIN to collect and report on any delinquent amounts arising out of the Carrier's relationship with the Government (31 U.S.C. 7701(c)(3)). The TIN provided hereunder may be matched with IRS records to verify its accuracy.

(d) Taxpayer Identification Number (TIN).
TIN: _____

(e) Type of organization.

- Sole proprietorship;
- Partnership;
- Corporate entity (not tax-exempt);
- Corporate entity (tax-exempt);
- Other _____.

(f) Common parent.

- Carrier is not owned or controlled by a common parent as defined in paragraph (a) of this clause.
- Name and TIN of common parent:

Name _____
TIN _____

(End of clause)

[65 FR 36386, June 8, 2000]

1652.204-74 Large provider agreements.

As prescribed by 1604.7202, the contracting officer will insert the following clause in all FEHB Program

contracts based on cost analysis (experience-rated):

LARGE PROVIDER AGREEMENTS (OCT 2005)

(a) *Notification and Information Requirements.* (1) The experience-rated Carrier must provide notice to the contracting officer of its intent to enter into or to make a significant modification of a Large Provider Agreement:

- (i) Not less than 60 days before entering into any Large Provider Agreement; and
- (ii) Not less than 60 days before exercising a renewal or other option, or significant modification to a Large Provider Agreement, when such action would result in total costs to the FEHB Program of an additional 20 percent or more above the existing contract. However, if a carrier is exercising a simple renewal or other option contemplated by a Large Provider Agreement that OPM previously reviewed, and there are no significant changes, then a statement to the effect that the renewal or other option is being exercised along with the dollar amount is sufficient notice.

(2) The carrier's notification to the contracting officer must be in writing and must, at a minimum:

- (i) Describe the supplies and/or services the proposed provider agreement will require;
- (ii) Identify the proposed basis for reimbursement;
- (iii) Identify the proposed provider agreement, explain why the carrier selected the proposed provider, and what contracting method it used, where applicable, including the kind of competition obtained;
- (iv) Describe the methodology the carrier used to compute the provider's profit; and,
- (v) Describe provider risk provisions.

(3) The Contracting officer may request from the carrier any additional information on a proposed provider agreement and its terms and conditions prior to a provider award and during the performance of the agreement.

(4) Within 30 days of receiving the carrier's notification, the Contracting officer will give the carrier either written comments or written notice that there will be no comments. If the Contracting officer comments, the carrier must respond in writing within 10 calendar days, and explain how it intends to address any concerns.

(5) When computing the carrier's service charge, the Contracting officer will consider how well the carrier complies with the provisions of this section, including the advance notification requirements, as an aspect of the carrier's performance factor.

(6) The Contracting officer's review of any Large Provider Agreement, option, renewal, or modification will not constitute a determination of the acceptability of the terms and conditions of any provider agreement or

of the allowability of any costs under the carrier's contract, nor will it relieve the carrier of any responsibility for performing the contract.

(b) *Records and Inspection.* The carrier must insert in all Large Provider Agreements the requirement that the provider will retain and make available to the Government all records relating to the agreement that support the annual statement of operations and enrollee records—Retain for 6 years after the agreement term ends.

(c) *Audit and Records—Negotiation.* The provisions of FAR 52.215-2, "Audit and Records—Negotiation," when required, or FEHBAR 1652.246-70, "FEHB Inspection" apply to all experience-rated Carriers' Large Provider Agreements. The Carrier will insert the clauses at FAR 52.215-2, when applicable, or FEHBAR 1652.246-70 in all Large Provider Agreements. In FAR 52.215-2 the carrier will substitute:

(1) The term "Large Provider" for the term "Contractor" throughout the clause, and

(2) The term "Large Provider Agreement" for the term "Subcontracts" in paragraph (g) of FAR 52.215-2. The term "Contracting officer" will mean the FEHB Program Contracting officer at OPM. The carrier will be responsible for ensuring the Large Provider complies with the provisions set forth in the clause.

(d) *Prohibited Agreements.* No provider agreement made under this contract will provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The carrier will insert this clause, 1652.204-74, in all Large Provider Agreements.

(End of clause)

[70 FR 31382, June 1, 2005, as amended at 71 FR 3016, Jan. 19, 2006]

1652.215-70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

As prescribed in 1615.407-1, the following clause shall be inserted in FEHBP contracts exceeding the threshold at FAR 15.403-4(a)(1) that are based on a combination of cost and price analysis (community rated):

RATE REDUCTION FOR DEFECTIVE PRICING OR DEFECTIVE COST OR PRICING DATA (JAN 2004)

(a) If any rate established in connection with this contract was increased because (1) the Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not complete, accurate, or current as certified in the Certificate of Accurate Cost or Pricing Data (FEHBAR 1615.406-2); (2) the Carrier submitted, or kept

in its files in support of the FEHBP rate, cost or pricing data that were not accurate as represented in the rate proposal documents; (3) the Carrier developed FEHBP rates with a rating methodology and structure inconsistent with that used to develop rates for similarly sized subscriber groups (see FEHBAR 1602.170-13) as certified in the Certificate of Accurate Cost or Pricing Data for Community Rated Carriers; or (4) the Carrier submitted or, or kept in its files in support of the FEHBP rate, data or information of any description that were not complete, accurate, and current—then, the rate shall be reduced in the amount by which the price was increased because of the defective data or information.

(b)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Carrier agrees not to raise the following matters as a defense:

(i) The Carrier was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted or maintained and identified.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Carrier took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Carrier did not submit or keep in its files a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (b)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Carrier certifies to the Contracting Officer that, to the best of the Carrier's knowledge and belief, the Carrier is entitled to the offset in the amount requested; and

(B) The Carrier proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Carrier to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset