PART 1615—CONTRACTING BY NEGOTIATION

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301; 5 U.S.C. 8902.

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

1615.070 Negotiation authority.

Subpart 1615.1—Source Selection Processes and Techniques

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Subparts 1615.8-1615.9 [Reserved]

Subpart 1615.70—Audit and Records—Negotiation

1615.7001 Audit and records.

Parent topic: SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

1615.070 Negotiation authority.

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

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.

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.

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.

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 a 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 plan year 2012, plans will have the option of continuing to use the similarly sized subscriber group (SSSG) rating methodology described in paragraph (c)(3)

(i) of this section or using the MLR rating methodology described in paragraph (c)(3)(ii) of this section. All non-traditional community rated (TCR) plans will be required to submit FEHB-specific MLR information for every year beginning with plan year 2011.

(i) *Similarly sized subscriber group (SSSG) methodology.*

(A) 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 SSSG. 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.

(B) 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 SSSG. Such adjustments will be based on the rate determined by using the methodology (including discounts) the carrier used for the SSSG.

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

(ii) *FEHB-specific medical loss ratio (MLR) threshold methodology.*

(A) 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 medical loss ratio (MLR) as defined in the ACA (Pub. L. 111-148) and as defined by HHS in 45 CFR part 158 for all FEHB community rated plans other than those required by state law to use Traditional Community Rating. The carrier will provide cost or pricing data, as well as the FEHB-specific MLR threshold 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.

(B) Contracts will be subject to a subsidization penalty if OPM determines that the FEHB group did not meet the FEHB-specific MLR threshold specified in the annual rate instruction to carriers. Such a subsidization penalty will be deposited into a Subsidization Penalty Account held at the U.S. Treasury. This Subsidization Penalty Account will be held in common with all community rated carriers and will be annually distributed to the contingency reserve accounts of all non-TCR community rated plans on a pro-rata basis.

(C) FEHB Program community-rated carriers will comply with the MLR criteria, including the FEHB-specific MLR threshold provided by OPM in the rate instructions for the applicable contract period. FEHB plans that are required by state law to use TCR are exempt from this requirement and will use the SSSG methodology outlined in paragraph (c)(3)(i) of this section.

(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 group (SSSG). Such adjustments will be based on the rate determined by using the methodology (including discounts) the carrier used for the SSSG.

(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 (experience-rated) or by a combination of cost and price analysis (community rated), OPM will determine a performance based percentage of the price using a weighted guidelines structured approach based on the profit analysis factors described in 1615.404-70. For experience-rated plans, OPM will use the performance based percentage so determined to develop the profit or fee prenegotiation objective, which will be the total profit (service charge) negotiated for the contract. For community-rated plans, OPM will use the performance based percentage so determined to develop an adjustment to net-to-carrier premiums, (performance adjustment) to be made during the first quarter of the following contract period.

(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 performance based percentage for FEHB Program contracts. For experience-rated plans, the performance based percentage will be applied to projected incurred claims and allowable administrative expenses. For community-rated plans, the performance based percentage will be applied to subscription income and will be used to calculate a performance adjustment to net-to-carrier premiums, as described at 48 CFR 1632.170(a)(2), to be made during the first quarter of the following contract period. In the context of the factors outlined in FAR 15.404- 4(d), OPM will assess performance of FEHB carriers according to four factors.

(1) *Clinical quality.* OPM will consider elements within such domains as preventive care, chronic disease management, medication use, and behavioral health. This factor incorporates elements from the FAR factor "contractor effort."

(2) *Customer service.* OPM will consider elements within such domains as communication, access, claims, and member experience/engagement. This factor incorporates elements of the FAR factor "contractor effort."

(3) *Resource use.* OPM will consider elements within such domains as utilization management, administrative, and cost trends. This factor incorporates elements of the FAR factors "contractor effort," "contract cost risk," and "cost control and other past accomplishments."

(4) *Contract oversight.* OPM will consider an assessment of contract performance in specific areas such as audit findings, fraud/waste/abuse, and responsiveness to OPM, benefits/network management, contract compliance, technology management, data security, and Federal socioeconomic programs. This factor could incorporate any of the FAR profit analysis factors listed at 15.404-4(d)(1)(i)-(vi).

(b) The sum of the maximum scores for the profit analysis factors will be 1 percent.

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

(a) The contracting officer will require a carrier with a contract meeting the requirements in 1615.402(c)(2) or (3) to execute one or more of the Certificates contained in this section. A carrier with a contract meeting the requirements in 1615.402(c)(2) will complete the appropriate Certificate(s) and keep such 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 complete and submit the appropriate certificate(s) to OPM.

(b) A carrier using the SSSG methodology described in 1615.402(c)(3)(i) will submit the "Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers (SSSG methodology)" along with its rate reconciliation during the first quarter of the applicable contract year. A carrier using the MLR methodology described in 1615.402(c)(3)(ii) will submit two forms. The "Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers (MLR methodology)" will be submitted along with the rate reconciliation during the first quarter of the applicable contract year. The "Certificate of Accurate MLR Calculation" will be submitted when the carrier submits its FEHB-specific MLR calculation to OPM.

(Beginning of first certificate)

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 Group.

* Insert the year for which the rates apply.

Firm:

Name:

Signature:

Date of Execution:

(End of first certificate)

(Beginning of second certificate)

Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers (MLR methodology)

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;

*Insert the year for which the rates apply.

Firm:

Name:

Signature:

Date of Execution:

(End of second certificate)

(Beginning of third certificate)

Certificate of Accurate MLR Calculation

This is to certify that, to the best of my knowledge and belief: the determination of the carrier's FEHB-specific medical loss ratio for * is accurate, complete, and consistent with the methodology as stated in 1615.402(c)(3)(ii).

*Insert the year for which the MLR calculation applies.

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.

(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).