Subpart 2152.2 - Text of Provisions and Clauses

Parent topic: PART 2152 - PRECONTRACT PROVISIONS AND CONTRACT CLAUSES

2152.203-70 Misleading, deceptive, or unfair advertising.

As prescribed in 2103.571, insert the following clause:

Misleading, Deceptive, or Unfair Advertising (OCT 2005)

The Contractor agrees that any advertising material authorized and released by the Contractor which mentions the FEGLI Program must be truthful and not misleading and must present an accurate statement of FEGLI Program benefits. The Contractor is prohibited from making incomplete and/or incorrect comparisons or using disparaging or minimizing techniques to compare its other products or services to those of the FEGLI Program. The Contractor agrees to use reasonable efforts to assure that agents selling its other products 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)

2152.204-70 Taxpayer Identification Number.

As prescribed in 2104.9001, insert the following clause:

Taxpayer Identification Number (OCT 2005)

(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 Contractor 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 Contractor in reporting income tax and other returns. The TIN is the Contractor's Social Security Number.

(b) The Contractor 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 Contractor is subject to the payment reporting requirements described in FAR 4.904. The Contractor's failure or refusal to furnish the information will result in payment being withheld until the TIN is provided.

(c) The Government may use the TIN to collect and report on any delinquent amounts arising out of the Contractor'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.

☐ Corporate entity (tax-exempt);

☐ Other _____

(f) Common parent.

☐ Contractor 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)

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.

(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 2005)

(a) The Contractor must invest and reinvest all FEGLI Program funds on hand until needed to discharge promptly the obligations incurred under the contract. Within the constraints of safety and liquidity of investments, the Contractor must seek to maximize investment income. However, the Contractor will not be responsible for any actions taken at the direction of OPM.

(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 paragraph (a) or (b) of this clause, the Contractor must pay to 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 paragraph (a) or (b) of this clause* means:

(1) Making any charges against the contract which are not actual, 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 by the Contractor as a result of failure to credit income due under the contract or failure to place funds on hand in income-producing investments and accounts must be paid from the date the funds should have been invested or appropriate income was not credited and will 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 2005)

(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 contract year;

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

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

(6) The Contractor's material 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 audit opinion on the annual financial report required by OPM for the FEGLI Program. Accounting firm employees must audit the report in accordance with Generally Accepted Government Auditing Standards or other requirements issued by OPM.

(b) Upon learning of a significant event, OPM may institute action, in proportion to the seriousness of the event, to protect the interest of insureds, including, but not limited to -

(1) Directing the Contractor to take corrective action; or

(2) Making a downward adjustment to the weight in the “Contractor Performance” factor 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 when the amount of the subcontract or modification that is charged to the FEGLI Program contract exceeds $550,000 and is at least 25 percent of the total cost of the subcontract.

(End of clause)

2152.215-70 Contractor records retention.

As prescribed in 2115.071, insert the following clause:

Contractor Records Retention (OCT 2005)

Notwithstanding the provisions of FAR 52.215-2(f), “Audit and Records - Negotiation,” the Contractor must retain and make available all records applicable to a contract term that support the annual financial report for a period of 5 years after the end of the contract term to which the records relate. Claim records must be maintained for 10 years after the end of the contract term to which the claim records relate. If the Contractor chooses to maintain paper documents in electronic format, the electronic version must be an exact replica of the paper document.

(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 2005)

(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. OPM will pay the Contractor the risk charge as specified in a letter from the Contracting Officer.

(b) At the Contractor's request, OPM will furnish, during the third quarter of the current contract year, an accounting of the funds in the Employees' Life Insurance Fund as of the end of the second quarter of the contract year.

(End of clause)

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 2005)

(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. OPM will pay the Contractor the service charge as specified in a letter from the Contracting Officer.

(b) At the Contractor's request, OPM will furnish, during the third quarter of the current contract year, an accounting of the funds in the Employees' Life Insurance Fund as of the end of the second quarter of the contract year.

(End of clause)

2152.224-70 Confidentiality of records.

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

Confidentiality of Records (OCT 2005)

(a) The Contractor will 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 in the Federal Register as 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 2005)

(a) *Annual financial report.*

(1) The Contractor must prepare annually a financial report summarizing the financial operations of the FEGLI Program for the previous contract year. This report will be due to OPM in accordance with a date established by OPM's requirements.

(2) The Contractor must have the most recent financial report for the FEGLI Program audited by an independent public accounting firm that ascribes to the standards of the American Institute of Certified Public Accountants. The audit must be performed in accordance with Generally Accepted Government Auditing Standards or other requirements issued by OPM. The report by the independent accounting firm on its audit must be submitted to OPM along with the annual financial report.

(3) Based on the results of either the independent audit or a Government audit, the FEGLI contract may be:

(i) Adjusted by amounts found not to constitute chargeable costs; or

(ii) Adjusted for prior overpayments or underpayments.

(b) *Definition of costs.*

(1) A cost is chargeable to the contract for a contract term if it is:

(i) An actual, allowable, allocable, and reasonable cost;

(ii) Incurred with proper justification and accounting support;

(iii) Determined in accordance with subpart 31.2 of the Federal Acquisition Regulation (FAR) and subpart 2131.2 of the Federal Employees' Group Life Insurance Acquisition Regulation (LIFAR) applicable on October 1 of each year; and

(iv) Determined in accordance with the terms of this contract.

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

(i) *Benefits.* Claims costs consist of payments made and costs incurred (including delayed settlement interest) by the Contractor for life insurance, accidental death and dismemberment insurance, excess mortality charges, post-mortem conversion charges, and conversion policies on behalf of insured persons, less any overpayments recovered (subject to the terms of LIFAR 2131.205-3), refunds, or other credits received.

(ii)

(A) *Administrative expenses.* Administrative expenses consist of chargeable costs as defined in paragraph (b)(1) of this clause incurred in the adjudication of 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, service charges to reinsurers, the cost of investigation and settlement of policy claims, the cost of maintaining records 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.

(B) Administrative expense ceiling. Each year an administrative expense ceiling for the following contract year is calculated based on the prior contract year's administrative expense ceiling, adjusted by the percentage change in the average monthly consumer Price Index for All Urban Consumers for the preceding 12 months. Administrative expenses are reimbursed up to the administrative expense ceiling or actual costs, whichever is less. Both parties will reexamine the base, including the prior year's actual expenses, at the request of either OPM or the Contractor. Within the administrative expense ceiling is a separately negotiated limit for indirect costs that may be charged against the ceiling for the contract year. The Contractor agrees to provide annually to the Contracting Officer a detailed report of direct and indirect administrative costs which form the basis for determining the limit on indirect costs for the following contract year. During a continuity of services period, OPM and the Contractor will negotiate a one-time increase in the administrative expense ceiling to cover phase-in/phase-out costs. Costs that exceed the revised ceiling must be submitted by the Contractor, in writing and in advance of their incurrence, to the Contracting Officer for approval.

(iii) *Investment income.* Investment income represents the amount earned by the Contractor after deducting chargeable investment expenses. Investment expenses are those chargeable contract costs, as defined in paragraph (b)(1) of this clause, which are attributable to the investment of FEGLI funds.

(c) *Certification of Annual Financial Report.*

(1) The Contractor must certify the annual financial report in the form set forth in paragraph (c)(2) of this clause. The certificate must 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 must be returned with the annual financial report.

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

Certification of Annual Financial Report

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

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

2. The costs included in the report are actual, allowable, allocable, and reasonable 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 report.

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)

2152.232-70 Payments.

As prescribed in 2132.171, insert the following clause:

Payments (OCT 2005)

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

(b) If OPM fails to fund the Letter of Credit (LOC) account for the full amount of premium due by the due date, a grace period of 31 days will 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. The contract will continue in force during the grace period.

(c) If OPM fails to fund the LOC account for any premiums within the grace period, the contract may be terminated at the end of the 31st day of the grace period in accordance with LIFAR 2149.002(a)(2). If during the grace period OPM presents written notice to the Contractor that the contract is to be terminated before the expiration of the grace period, the contract will be terminated the later of the date of receipt of such written notice by the Contractor or the date specified by OPM for termination. In either event, OPM will be liable to the Contractor for all premiums then due and unpaid.

(d) In accordance with LIFAR 2143.205 and LIFAR 2252.243-70, Changes, 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 will make an equitable adjustment to the payments under this contract.

(e) In the event this contract is terminated in accordance with LIFAR part 2149, the special contingency reserve held by the Contractor will 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 2005)

(a) The Contractor must maintain FEGLI Program funds in such a manner as to be separately identifiable from other assets of the Contractor.

(b) The Contractor may request a modification of paragraph (a) of this section from the Contracting Officer. The modification must be requested, and approved by the Contracting Officer, in advance of any change, and the Contractor must demonstrate that accounting techniques have been established that clearly measure FEGLI Program cash and investment income (i.e., subsidiary ledgers). Reconciliations between amounts reported and actual amounts shown in accounting records must be provided as supporting schedules to the annual financial report.

(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 2005)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption. The Contractor further recognizes that upon contract expiration or termination, including termination by the Contractor for OPM's failure to make timely premium payments, a successor, either the Government or another Contractor, may continue them. The Contractor agrees to furnish phase-in training and 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 must allow as many experienced personnel as practicable to remain on the job during the transition period to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also must, except if prohibited by applicable law, 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 must release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor will 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) in accordance with the provisions of the administrative expense ceiling in the clause at 2152.231-70(b)(2)(ii)(B) and a risk charge or a service charge (profit) not to exceed a pro rata portion of the risk or service charge under this contract. The amount of profit will 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. OPM will pay an incentive amount to the Contractor not to exceed the pro rata risk or service charge for the continuity of services period, if the Contractor has performed exceptionally during the transition period to a new Contractor. The Contracting Officer uses the weighted guidelines method described in LIFAR 2115.404-71 in determining the incentive amount.

(End of clause)

2152.243-70 Changes.

As prescribed in 2143.205, insert the following clause:

Changes (OCT 2005)

(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 within 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 2005)

(a) The Contractor must 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 $550,000 and is at least 25 percent of the total cost of the subcontract.

(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 will provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under cost reimbursement type subcontracts will not exceed the fee limitations in FAR 15.404-4(c)(4)(i). Any profit or fee payable under a subcontract will be in accordance with the provisions of Section _____.

(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 2005)

(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 must keep complete records of its quality assurance procedures and the results of their implementation and make them available to an authorized Government entity during contract performance and for 5 years after the end of the contract term to which the records relate.

(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 2005)

(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 in accordance with FAR part 49 and FAR 52.249-8 for default by the Contractor. This contract terminates at the end of the grace period if the Government does not fund the LOC account for any of the premium due to the Contractor (see LIFAR 2149.002(a)(2)). However, the Contractor and OPM may agree to continue the contract. In addition, the Contractor agrees to reinstate the contract if termination

(1) arose out of the Government's inadvertent failure to fund the LOC account for the amount of the premium payment prior to the expiration of the grace period as defined in LIFAR 2102.101, and/or (2) was due to circumstances beyond the Government's control, provided that the LOC account is funded in the amount of the premium payment due to the Contractor within 5 days after the expiration of the grace period. In the event of such reinstatement, OPM will equitably adjust the payments due under the contract to compensate the Contractor for any increased costs of performance that result from the Government's failure to fund the LOC account prior to the expiration of the grace period and/or such reinstatement.

(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 for Contractor's default or OPM's convenience, the Contractor agrees to assist OPM with an orderly and efficient transition to a successor in accordance with LIFAR 2137.102, LIFAR 2137.110, and the provisions of the “Continuity of Services” clause at 2152.237-70. The Contractor is not required to continue performance subsequent to OPM's failure to fund the LOC account for premiums due under paragraph (b) of this clause.

(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 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)