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 one of the Certificates 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 reconciliation documents or MLR Calculation;

(3) The Carrier developed FEHBP rates for traditional community rated plans with a rating methodology and structure inconsistent with that used to develop rates for a similarly sized subscriber group (see FEHBAR 1602.170-13) as certified in the Certificate of Accurate Cost or Pricing Data for Community Rated Carriers;

(4) The Carrier, who is not mandated by the State to use traditional community rating, developed FEHBP rates with a rating methodology and structure inconsistent with its State-filed rating methodology (or if not required to file with the State, their standard written and established rating methodology) or inconsistent with the FEHB specific medical loss ratio (MLR) requirements (see FEHBAR 1602.170-13); or

(5) The Carrier submitted 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 even if the available data had been submitted before the date of agreement on price.

(c) When the Contracting Officer determines that the rates shall be reduced and the Government is thereby entitled to a refund or that the Government is entitled to a MLR penalty, the Carrier shall be liable to and shall pay the FEHB Fund at the time the overpayment is repaid or at the time the MLR penalty is paid—

(1) Simple interest on the amount of the overpayment from the date the overpayment was paid from the FEHB Fund to the Carrier until the date the overcharge is liquidated. In calculating the amount of interest due, the quarterly rate determinations by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods the overcharge was retained by the Carrier shall be used;

(2) A penalty equal to the amount of overpayment, if the Carrier knowingly submitted cost or pricing data which was incomplete, inaccurate, or noncurrent; and,

(3) Simple interest on the MLR penalty from the date on which the penalty should have been paid to the FEHB Fund to the date on which the penalty was or will be actually paid to the FEHB fund. The interest rate shall be calculated as specified in paragraph (c)(1) of this section.

(End of clause)

Parent topic: Subpart 1652.2—Texts of FEHBP Clauses