

(1) An FEHB carrier, at least 25 percent of whose total contracts are comprised of FEHB enrollee contracts, and

(2) A provider of services or supplies (including organizations that own or contract with direct providers, or organizations that process claims or manage patient care),

(i) Where the total costs charged to the FEHB carrier for a contract term for FEHB members, including benefits and services, are reasonably expected to exceed 5 percent of the carrier's total FEHB benefits costs, or

(ii) Where the total administrative costs charged to the FEHB carrier for the contract term for FEHB members are reasonably expected to exceed 5 percent of the carrier's total FEHB administrative costs (applicable to agreements where the provider is not responsible for FEHB benefits costs).

(b) The FEHB Program Annual Accounting Statement for the prior contract year will be used to determine the 5 percent threshold under large provider agreements.

(c) Large provider agreements are subject to the audit provisions of FAR 52.215-2, "Audit and Records-Negotiation."

PART 1604—ADMINISTRATIVE MATTERS

6. Subpart 1604.72 is added to read as follows:

Subpart 1604.72—Large Provider Agreements

Sec.

1604.7201 FEHB Program large provider agreements.

1604.7202 Large provider agreement clause.

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

Subpart 1604.72—Large Provider Agreements

1604.7201 FEHB Program large provider agreements.

The following provisions apply to all experience rated carriers participating in the FEHB Program:

(a) *Notification and information requirements.* (1) All experience rated carriers 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 renewals or other options, or making a significant modification.

(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 either give the carrier 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) The contracting officer may inform the carrier that if it awards the provider agreement before addressing OPM's concerns, it may not charge costs incurred under the agreement to the contract.

(6) When computing the carrier's annual 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.

(7) The contracting officer's review of any provider agreement, option, renewal, or modification shall not constitute a determination of the acceptability of terms or conditions of any provider agreement or the allowability of any costs under the carrier's contract, nor shall 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 as follows:

(1) Records that support the annual statement of operations—Retain for 6 years after the agreement term ends.

(2) Enrollee records, if applicable—Retain for 6 years after the agreement term ends.

(c) *Audit.* The provisions of FAR 52.215-2, Audit and Records—Negotiation, apply to all experience rated carriers' large provider agreements.

1604.7202 Large provider agreement clause.

The Contracting Officer shall insert the clause set forth at section 1652.204-74 in all experience rated FEHB Program contracts.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1615—CONTRACTING BY NEGOTIATION

7. A new § 1615.070 is added to read as follows:

1615.070 Negotiation authority.

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

8. Subpart 1615.1 is revised to read as follows:

Subpart 1615.1—Source Selection Processes and Techniques.

Sec.

1615.170 Applicability.

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

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.

9. Subpart 1615.2 is added to read as follows:

Subpart 1615.2—Solicitation and Receipt of Proposals and Information

Sec.

1615.270 Applicability.

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

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 1615.6—[Amended]

10. Subpart 1615.6 is redesignated as 1615.3 and Section 1615.602 is redesignated as 1615.370. In newly redesignated 1615.370 remove "15.6" and add in its place "15.3".