

11. Subpart 1615.4 is revised to read as follows:

**Subpart 1615.4—Contract Pricing**

Sec.

1615.402 Pricing policy.

1615.404—4 Profit.

1615.404—70 Profit analysis factors.

1615.406—2 Certificate of accurate cost or pricing data for community rated carriers.

1615.407—1 Rate reduction for defective pricing or defective cost or pricing data.

1615.470 Carrier investment of FEHB funds.

1615.470—1 Investment income clause.

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

**Subpart 1615.4—Contract Pricing**

**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 shall 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 shall not require the carrier to provide cost or pricing data in the rate proposal for the following contract term.

(b) Cost analysis shall 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 shall 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 shall 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 shall require the carrier to submit its rate proposal, utilization data, and the certificate of accurate cost or pricing data required in 1615.406–2. In addition, OPM shall require the carrier to complete the proposed rates form containing cost and pricing data, and the Community Rate Questionnaire, but shall not require the carrier to send

these documents to OPM. The carrier shall keep the documents on file for periodic auditor and actuarial review in accordance with 1652.204–70. OPM shall perform a basic reasonableness test on the data submitted. Rates that do not pass this test shall be subject to further OPM review.

(3) 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 shall require the carrier to provide the data and methodology used to determine the FEHB Program rates. OPM shall also require the data and methodology used to determine the rates for the carrier's similarly sized subscriber groups. The carrier shall provide cost or pricing data required by OPM in its rate instructions for the applicable contract period. OPM shall 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.

(4) Contracts shall 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 SSSGs. Such adjustments shall be based on the lower of the two rates determined by using the methodology (including discounts) the Carrier used for the two SSSGs.

(5) FEHB Program community rated carriers shall 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, OPM will determine the profit or fee prenegotiation objective (service charge) portion of the contracts by use of a weighted guidelines structured approach. The service charge so determined shall be the total service charge that may be negotiated for the contract and shall encompass any service charge (whether entitled service charge, profit, fee, contribution to reserves or surpluses, or any other title) that may have been negotiated by the prime contractor with any subcontractor or underwriter.

(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 service charge prenegotiation objective for FEHB Program contracts. The following factors, as defined in FAR 15.404–4(d), will be applied to projected incurred claims and allowable administrative expenses:

(1) *Contractor performance.* OPM will consider such elements as the accurate and timely processing of benefit claims and the volume and validity of disputed claims as measures of economical and efficient contract performance. This factor will be judged apart from the contractor's basic responsibility for contract performance and will be a measure of the extent and nature of the contractor's contribution to the FEHB Program through the application of managerial expertise and effort. Evidence of effective contract performance will receive a plus weight, and poor performance or failure to comply with contract terms and conditions a negative weight. Innovations of benefit to the FEHB Program will generally result in a positive weight; documented inattention or indifference to cost control will generally result in a negative weight.

(2) *Contract cost risk.* In assessing the degree of cost responsibility and associated risk assumed by the contractor as a factor to be considered in negotiating profit, OPM will consider such underwriting elements as the availability of margins, group size, enrollment demographics and fluctuation, and the probability of conversion and adverse selection, as well as the extent of financial assistance the carrier renders to the contract. However, the "loss carry forward basis" of experience rated group insurance practices, which mitigates contract risk, will likely serve to diminish this profit analysis factor in an overall determination of profit. This factor is intended to provide profit opportunities commensurate with the contractor's share of cost risks only, taking into account elements such as the adequacy and reliability of data for estimating costs.

(3) *Federal socioeconomic programs.* OPM will consider documented evidence of successful, contractor-initiated efforts to support Federal socioeconomic programs such as drug and substance abuse deterrents and concerns of the type enumerated in FAR 15.404–4(d)(iii), as a factor in negotiating profit. This factor will be