

1631.205–81 Inferred Reasonableness.

If the Carrier follows the notification and consent requirements of paragraphs (a), (b) and (c) of 1652.244–70, and subsequently obtains the Contracting Officer's consent or ratification, then the reasonableness of the subcontract's costs will be inferred.

PART 1632—CONTRACT FINANCING**Subpart 1632.1—General****1632.170 [Amended]**

16. In 1632.170, remove paragraph (c).

Subpart 1632.7—Contract Funding**1632.771 [Amended]**

17. In 1632.771 paragraph (d), remove “1652.232–70” and add in its place “1652.232–72.”

1632.772 [Amended]

18. In 1632.772, remove “1652.232–70” and add in its place “1652.232–72.”

SUBCHAPTER G—CONTRACT MANAGEMENT**PART 1644—SUBCONTRACTING POLICIES AND PROCEDURES****Subpart 1644.1—General**

19. Section 1644.170 is revised to read as follows:

1644.170 Policy for FEHB Program subcontracting consent.

For all experience rated contracts, the Carriers shall notify the Contracting Officer in writing at least 60 days in advance of entering into any subcontract or subcontract modification, or as otherwise specified by the contract, if the amount of the subcontract or modification charged to the FEHB Program equals or exceeds \$550,000. Failure to provide advance notice may result in the Contracting Officer's disallowance of the costs. In determining whether the amount chargeable to the FEHB Program contract for a given subcontract or modification equals or exceeds the \$550,000 threshold, the following rules apply:

(a) For initial advance notification, the Carrier shall add the total price for the base year and all options, including quantity or service options and option periods, and

(b) The Carrier shall give advance notification of modifications not accounted for in paragraph (a) of this section that cause the total price to equal or exceed the threshold. Carriers shall follow appropriate procurement procedures that comply with the Federal Acquisition Regulation's (FAR)

policies and procedures relating to competition and contract pricing for the acquisition of both commercial and non-commercial items. All subcontracts or subcontract modifications that equal or exceed the threshold are subject to audit under FAR 52.215–2 Audit and Records—Negotiation.

SUBCHAPTER H—CLAUSES AND FORMS**PART 1652—CONTRACT CLAUSES****Subpart 1652.2—Texts of FEHB Program Clauses**

20. Section 1652.204–70 is revised to read as follows:

1652.204–70 Contractor Records Retention.

As prescribed in 1604.705 the following clause shall be inserted in all FEHB Program contracts.

Contractor Records Retention (Jan 2003)

Notwithstanding the provisions of Section 5.7 (FAR 52.215–2(f)) Audit and Records—Negotiation, the Carrier shall retain and make available all records applicable to a contract term that support the annual statement of operations and, for contracts that equal or exceed the threshold at FAR 15.403–4(a)(1), the rate submission for that contract term for a period of 6 years after the end of the contract term to which the records relate. This includes all records of large provider agreements and subcontracts that equal or exceed the threshold requirements. In addition, individual enrollee and/or patient claim records shall be maintained for 6 years after the end of the contract term to which the claim records relate. (End Clause)

21. Section 1652.204–74 is added to read as follows:

1652.204–74 Large provider agreements.

As prescribed by 1604.7202, the contracting officer shall insert the following clause in all FEHB Program contracts based on cost analysis (experience rated):

Large Provider Agreements (JAN 2003)

(a) *Notification and Information Requirements.* (1) The experience rated Carrier 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 a renewal or other option, or significant modification to a large provider agreement.

(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 give the Carrier either 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 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 the terms and conditions of any provider agreement or of 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 that support the annual statement of operations and enrollee records—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. The Carrier shall insert the clause, 52.215–2, in all large provider agreements and shall substitute

(1) The term “provider” for the term “Contractor” throughout the clause, and

(2) The term “large provider contracts” for the term “Subcontracts” in paragraph (g) of FAR 52.215–2. The term “Contracting Officer” shall mean the FEHB Program Contracting Officer at OPM. The Carrier shall be responsible for ensuring the large provider complies with the provisions set forth in the clause.

(d) *Prohibited Agreements.* No provider agreement made under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The Carrier shall insert this clause, 1652.204–74, in all large provider agreements.
(End of Clause)