

1652.215-70 (Amended)

22. In the introductory text of section 1652.215-70, remove "1615.804.72" and add in its place "1615.407-1," remove "15.804-2(a)(1)" and add in its place "15.403-4(a)(1)," in the clause title, remove "JAN 2000" and add in its place "JAN 2003," in paragraph (a)(1) of the clause remove "1615.804.70" and add in its place "1615.406-2," and remove paragraph (d).

1652.215-71 [Amended]

23. In the introductory text of section 1652.215-71, remove "1615.805-71" and add in its place "1615.470-1."

1652.216-70 [Amended]

24. In 1652.216-70, remove "JAN 2000" in the clause title and add in its place "JAN 2003," and remove paragraph (c) of the clause.

1652.216-71 [Amended]

25. In 1652.216-71, remove "JAN 2000" in the clause title and add in its place "JAN 2003," and remove paragraph (d) of the clause.

26. In 1652.222-70, paragraph (d) of the clause is revised to read as follows:

1652.222-70 Notice of Significant Events.

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Notice of Significant Events (Jan 2001)

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(d) The Carrier shall insert this clause in any subcontract or subcontract modification if the amount of the subcontract or modification charged to the FEHB Program (or in the case of a community rated carrier, applicable to the FEHB Program) equals or exceeds \$550,000.
(End of Clause)

27. Section 1652.244-70, is revised to read as follows:

1652.244-70 Subcontracts.

As prescribed in section 1644.270, the following clause shall be inserted in all FEHB Program contracts based on cost analysis (experience rated):

Subcontracts (Jan 2003)

(a) The Carrier 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 this 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:

(1) 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

(2) The Carrier shall give advance notification of modifications not accounted for in paragraph (a) of this clause, if they cause the total price to equal or exceed the threshold. The Carrier 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-Negotiations.

(b) The advance notification required by paragraph (a) of this clause shall include the information specified below:

(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 subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(4) The proposed subcontract price and the Carrier's cost or price analysis;

(5) An explanation of why the subcontract has been categorized as a subcontract for a commercial item as defined in 48 CFR 2.101. If the subcontract is not for a commercial item, then the subcontractor's current, complete, and accurate cost or pricing data and a Certificate of Current Cost or Pricing Data must be submitted to the Contracting Officer.

(6) (Reserved)

(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) An explanation of the reason cost or pricing data are not required, if the item is not a commercial item but the carrier believes that cost or pricing data are not required.

(iv) The extent, if any, to which the Carrier 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, if any, 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 Carrier 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 Carrier'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 Carrier 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 for which written consent was not obtained.

Ratification shall constitute the consent of the Contracting Officer.

(d) The Contracting Officer may waive the requirement for advance notification and consent required by paragraphs (a), (b) and (c) of this clause where the Carrier 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 negotiation of the contract or contract renewal.

(e) If the Carrier follows the notification and consent requirements of paragraphs (a), (b) and (c) of this clause and subsequently obtains the Contracting Officer's consent or ratification, then the reasonableness of the subcontract's costs will be inferred as provided for in 1631.205-81. However, consent or ratification by the Contracting Officer will 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) That the Carrier should be relieved of any responsibility for performing this contract.

(f) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under cost reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i). Any profit or fee payable under a subcontract shall be in accordance with the provision of Section 3.7, Service Charge.

(g) The Carrier shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Carrier by any subcontractor or vendor that, in the opinion of the Carrier, may result in litigation related in any way to this contract with respect to which the Carrier may be entitled to reimbursement from the Government.
(End of Clause)

Subpart 1652.3—FEHB Program Clause Matrix

28. In section 1652.370, the FEHB Program Clause Matrix, is revised to read as follows:

1652.370 Use of the Matrix.

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