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(c) The Carrier shall incorporate this clause in all subcontracts that exceed $25,000 and shall substitute "contractor" or other appropriate reference for "Carrier and/or its underwriter."

(End of clause)


1652.232–73 Approval for the Assignment of Claims.

As prescribed in 1632.806–70, the following clause shall be inserted in all FEHBP contracts:

APPROVAL FOR ASSIGNMENT OF CLAIMS (JAN 1991)

(a) Notwithstanding the provisions of section 5.35, (FAR 52.232–23) Assignment of Claims, the Carrier shall not make any assignment under the Assignment of Claims Act without the prior written approval of the Contracting Officer.

(b) Unless a different period is specified in the Contracting Officer's written approval, an assignment shall be in force only for a period of 1 year from the date of the Contracting Officer's approval. However, assignments may be renewed upon their expiration.

(End of clause)

[55 FR 27418, July 2, 1990]

1652.243–70 Changes—Negotiated benefits contracts.

As prescribed in section 1643.205–70, the following clause shall be inserted in all FEHBP contracts.

CHANGES—NEGOTIATED BENEFITS CONTRACTS (JAN 1998)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Carrier must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Carrier from proceeding with the contract as changed.

(End of clause)


1652.244–70 Subcontracts.

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

SUBCONTRACTS (JUL 2005)

(a) The carrier will notify the Contracting officer in writing at least 30 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 FEHBP Program equals or exceeds $550,000 and is at least 25 percent of the total subcontract cost. The amount of the dollar charge to the FEHBP Program shall be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth in Negotiations Act pursuant to 41 U.S.C. 254b(a)(7). Failure to provide advance notice may result in a Contracting officer's disallowance of subcontract costs or a penalty in the performance aspect of the carrier's service charge. In determining whether the amount chargeable to the FEHBP Program 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 cost/price for the base year and all options, including quantity or service options and option periods.

(2) For contract modifications, options and/or renewals (e.g. evergreen contracts) not accounted for in paragraph (a)(1) of this clause, the carrier shall provide advance notification if they cause the total price to equal or exceed the threshold. OPM's review will be of the modification(s), itself, but documentation for the original subcontract will be required to perform the review. The $550,000 threshold will be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth in Negotiations Act. All subcontracts or subcontract modifications that equal or exceed the threshold are subject to audit under FAR 52.215–2 "Audit and
The advance notification required by paragraph (a) of this clause will 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) 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 if required by law, regulation, or other contract provisions.
(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 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 will 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.

The carrier will 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 will constitute the consent of the Contracting officer.

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.

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 1631.205-41. 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.

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

The carrier will 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)

[70 FR 31383, June 1, 2005, as amended at 71 FR 3016, Jan. 19, 2006]