of the allowability of any costs under the carrier's contract, nor will 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 and Records—Negotiation. The provisions of FAR 52.215–2, “Audit and Records—Negotiation,” when required, or FEHBAR 1652.246–70, “FEHB Inspection” apply to all experience-rated Carriers' Large Provider Agreements. The carrier will insert the clauses at FAR 52.215–2, when applicable, or FEHBAR 1652.246–70 in all Large Provider Agreements. In FAR 52.215–2 the carrier will substitute:

1. The term “Large Provider” for the term “Contractor” throughout the clause, and
2. The term “Large Provider Agreement” for the term “Subcontracts” in paragraph (g) of FAR 52.215–2. The term “Contracting officer” will mean the FEHB Program Contracting officer at OPM. The carrier will 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 will provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The carrier will insert this clause, 1652.204–74, in all Large Provider Agreements.

(End of clause)

[70 FR 31382, June 1, 2005, as amended at 71 FR 3016, Jan. 19, 2006]

1652.215–70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

As prescribed in 1615.407–1, the following clause shall be inserted in FEHB contracts exceeding the threshold at FAR 15.403–4(a)(1) that are based on a combination of cost and price analysis (community rated):

RATE REDUCTION FOR DEFECTIVE PRICING OR DEFECTIVE COST OR PRICING DATA (JAN 2004)

(a) If any rate established in connection with this contract was increased because (1) the Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not complete, accurate, or current as certified in the Certificate of Accurate Cost or Pricing Data (FEHBAR 1615.406–2); (2) the Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not accurate as represented in the rate proposal documents; (3) the Carrier developed FEHBP rates with a rating methodology and structure inconsistent with that used to develop rates for similarly sized subscriber groups (see FEHBAR 1602.170–13) as certified in the Certificate of Accurate Cost or Pricing Data for Community Rated Carriers; or (4) the Carrier submitted or, or kept in its files in support of the FEHBP rate, data or information of any description that were not complete, accurate, and current—then, the rate shall be reduced in the amount by which the price was increased because of the defective data or information.

(b)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Carrier agrees not to raise the following matters as a defense:

1. The Carrier was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted or maintained and identified.
2. The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Carrier took no affirmative action to bring the character of the data to the attention of the Contracting Officer.
3. The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
4. The Carrier did not submit or keep in its files a Certificate of Current Cost or Pricing Data.

(ii) Except as prohibited by subdivision (b)(2)(i) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Carrier certifies to the Contracting Officer that, to the best of the Carrier’s knowledge and belief, the Carrier is entitled to the offset in the amount requested; and
(B) The Carrier proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Carrier to be understated when the Certificate of Current Cost or Pricing Data was signed; or
(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset
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1652.216–70 Accounting and price adjustment.

As prescribed in section 1616.7001, the following clause shall be inserted in all FEHB contracts based on a combination of cost and price analysis (community rated).

ACCOUNTING AND PRICE ADJUSTMENT (JAN 2003)

(a) Annual Accounting Statement. The Carrier, not later than 90 days after the end of each contract period, shall furnish to OPM for that contract period an accounting of its operations under the contract. The accounting shall be in the form prescribed by OPM.

(b) Adjustment. (1) This contract is community rated as defined in FEHBA 1992.170–2.