

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1629—TAXES

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

SOURCE: 62 FR 47575, Sept. 10, 1997, unless otherwise noted.

Subpart 1629.4—Contract Clauses

1629.402 Foreign contracts.

The clause set forth in section 1652.229-70 shall be inserted in all FEHBP contracts performed outside the United States, its possessions, and Puerto Rico.

PART 1631—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1631.2—Contracts With Commercial Organizations

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

SOURCE: 52 FR 16041, May 1, 1987, unless otherwise noted.

Subpart 1631.2—Contracts With Commercial Organizations

1631.200 Scope of subpart.

The cost principles under this subpart apply only to contracts in which

premiums and subscription income are determined on the basis of experience rating, in which cost analysis is performed, or in which price is determined on the basis of actual costs incurred.

1631.201-70 FEHBP credits.

The provisions of FAR 31.201-5 shall apply to income, rebates, allowances, and other credits resulting from benefit payments that include, but are not limited to—

- (a) Coordination of benefit refunds;
- (b) Hospital year-end settlements;
- (c) Uncashed and returned checks;
- (d) Utilization review refunds;
- (e) Refunds attributable to litigation with subscribers or providers of health services; and
- (f) Erroneous benefit payment, overpayment, and duplicate payment recoveries.

1631.203-70 FEHBP General and Administrative (G&A) expenses.

The provisions of FAR 31.203 apply to the allocation of indirect costs by means of a “dividend or retention formula.”

1631.205 Selected costs.

1631.205-41 Taxes.

5 U.S.C. 8909(f)(1) prohibits the imposition of taxes, fees, or other monetary payment, directly or indirectly, on FEHB premiums by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority of those entities. Therefore, FAR 31.205-41 is modified to include those taxes as unallowable costs. The prohibited payments, referred to elsewhere in these regulations as “premium taxes,” applies to all payments directed by States or municipalities, regardless of how they may be titled, to whom they must be paid, or the purpose for which they are collected, and it applies to all forms of direct and indirect measurements on FEHBP premiums, however modified, to include cost per contract or enrollee, with the sole exception of a tax on net income or profit, if that tax, fee, or payment is

1631.205-70

applicable to a broad range of business activity.

[56 FR 57496, Nov. 12, 1991]

1631.205-70 FEHBP public relations and advertising costs.

(a) The cost of media messages that are directed at advising current FEHBP subscribers on how to obtain benefits shall be an allowable expense within the meaning of FAR 31.205-1 because this service is directly related to performance of the FEHBP contract. If there is any question about the allowability of such a cost, the carrier may request advance approval regarding the content and cost of the message.

(b) Costs of media messages not provided for in paragraph (a) of this section are allowable if the content is specifically approved by the contracting officer and all of the following criteria are met:

(1) The primary effect of the message is to disseminate information on health care cost containment or preventive health care;

(2) The costs of the carrier's messages are allocated to all underwritten and non-underwritten lines of business; and

(3) The contracting officer approves the total dollar amount of the carrier's messages to be charged to the FEHBP in advance of the contract year.

(c) Costs of messages that are intended to, or which have the primary effect of, calling favorable attention to the carrier (or subcontractor) for the purpose of enhancing its overall image or selling its health plan are not allowable.

1631.205-71 FEHBP bad debts.

Erroneous benefit payments are not automatically disallowed by FAR 31.205-3.

1631.205-72 FEHBP compensation for personal services.

Overtime on an FEHBP contract would normally meet the condition specified in FAR 22.103. Premiums for overtime, extra-pay shifts, and multi-shifts meeting the specified conditions shall be allowed without prior approval.

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1631.205-73 FEHBP interest expense.

(a) Interest charges incurred in the administration of FEHBP contracts are not allowable in accordance with FAR 31.205-20. However, interest charges that are associated with the carrier's investment of FEHBP account funds are not considered administrative costs and may be allowable under very limited circumstances if all of the following criteria are met:

(1) Borrowing is limited to the positive balance of the carrier's entire FEHBP investment portfolio;

(2) FEHBP funds are tied up in long-term securities;

(3) Liquidation of long-term securities would cost more than the cost of the interest;

(4) The interest rates charged are at or below current market rates; and

(5) Advance written approval of the contracting officer is obtained before such costs are incurred.

(b) The carrier must demonstrate on a case-by-case basis that borrowing rather than cashing in long-term investments shall actually result in cost savings to the FEHB Program. Satisfactory demonstration of cost savings is a prerequisite to contracting officer approval of the interest cost as a charge to the contract.

(c) If the interest charge is allowed, the risk factor in the service charge will be adjusted downward so that the carrier does not recover interest costs through both the service charge and an allowance under this paragraph.

1631.205-74 FEHBP losses on other contracts.

FAR 31.205-23 shall not be construed to prohibit the application of the normal "loss carry forward" principle that is fundamental to continuing insurance contracts that are based on experience rating.

1631.205-75 Selling costs.

(a) FAR 31.205-38 is modified to eliminate from allowable costs those costs related to sales promotion and the payment of sales commissions fees or salaries to employees or outside commercial or selling agencies for enrolling Federal subscribers in a particular FEHB plan.