

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 2 and 101

[ET Docket No. 95-183; RM-8553; PP Docket No. 93-253; FCC 04-78]

37.0-38.6 GHz and 38.6-40.0 GHz Bands—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In this document, the Federal Communications Commission is extending the comment and reply comment period for the Third Notice of Proposed Rulemaking (NPRM). The Commission finds that it is in the public interest to extend the time for the filing of comments and reply comments on the NPRM.

DATES: The time for filing comments on all issues raised in the NPRM, including Paperwork Reduction Act is extended to December 3, 2004, and the time for filing reply comments is extended January 3, 2005.

FOR FURTHER INFORMATION CONTACT: Charlie Oliver, 202-418-2487.

SUPPLEMENTARY INFORMATION: This is a summary of an Order released by the Commission, extending the time for filing comments and reply comments on the Third Notice of Proposed Rulemaking (NPRM), FCC 04-78, released on May 5, 2004. Comment due dates contained in the summary of the NPRM published in the **Federal Register**, 69 FR 52632, August 27, 2004, are inconsistent with comment due dates contained in the NPRM.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04-22194 Filed 10-1-04; 8:45 am]

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OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 2101, 2102, 2103, 2104, 2105, 2109, 2110, 2115, 2116, 2131, 2132, 2137, 2144, 2146, 2149, and 2152

RIN 3206-A165

Federal Employees' Group Life Insurance; Federal Acquisition Regulation

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to amend the Federal Employees' Group Life Insurance (FEGLI) Acquisition Regulation. The proposed regulations incorporate changes in administrative policy and practices and make clarifying language changes.

DATES: OPM must receive comments on or before December 3, 2004.

ADDRESSES: Send written comments to Abby L. Block, Deputy Associate Director for Employee and Family Support Policy, Strategic Human Resources Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415; or deliver to OPM, Room 3425, 1900 E Street NW.; or FAX to (202) 606-0633.

FOR FURTHER INFORMATION CONTACT: Karen Leibach, (202) 606-0004.

SUPPLEMENTARY INFORMATION: On August 27, 1993, OPM issued the Life Insurance Federal Acquisition Regulation (LIFAR), 48 CFR chapter 21, which identifies basic and significant acquisition policies that are unique to the FEGLI Program. The proposed regulations explain changes in the FEGLI Program's policies, update Federal Acquisition Regulation (FAR) changes, and make clarifying changes to the language.

Some of the more significant changes in the regulations are:

LIFAR 2101.102(b), Authority, is modified to reflect the prior consolidation of 5 CFR parts 870 through 874 into one part, part 870. An identical change is also made in 2109.7001(a).

The revised regulation provides that both OPM and the Contractor, with the approval of OPM, may issue FEGLI literature to employees (2103.570(a)). The language clarifies that the FEGLI Program Booklet, along with valid election documents, serves as certification of coverage under the FEGLI Program. The Booklet alone does not suffice as certification of coverage.

Under revised 2110.7002, Contractor investment of FEGLI Program funds, the Contractor is not responsible for any actions regarding investment strategy to maximize investment income when and if such actions were directed by OPM. This modification protects the Contractor in the event it is requested to take an action that could have an adverse impact on its responsibility to manage and invest Program funds in a prudent manner. The same modification occurs in 2152.210-70(a).

Section 2131.109, Advance agreements, increases the threshold from \$25,000 to \$100,000 for precontract and nonrecurring costs of

the Contractor. We consider this change reasonable in relation to the total cost of the FEGLI contract. We are making a similar change at 2131.205-32.

A new subparagraph, Administrative Expense Ceiling, is added to 2152.231-70 (Accounting and allowable cost). Calculated annually, the administrative expense ceiling is based on the Contractor's prior year's administrative expense ceiling and adjusted by the percent change in the Consumer Price Index for All Urban Consumers for the preceding 12 months. Both OPM and the Contractor will reexamine the base, including the prior year's actual expenses, if either party so requests.

During a continuation of services period, revised policy allows for a one-time negotiated increase in the administrative expense ceiling to handle phase-in/phase-out costs. All costs, including costs that exceed the revised ceiling, must be actual, allowable, allocable, and reasonable under FAR cost principles. Since indirect costs are charged against an annual administrative expense ceiling, the policy on indirect costs is modified (2131.203) to delete reference to a "dividend or retention formula." Under the ceiling, a separate annual limit for indirect costs is negotiated between OPM and the Contractor.

An OPM policy change adds an incentive fee the Contractor can earn for exceptional performance during a continuity of services period (2137.102 and 2152.237-70). The incentive fee cannot exceed the pro rata risk or service charge for the same period. A new factor, Transitional services, is added to the weighted guidelines at 2115.404-71 (Profit analysis factors) to reflect this change and is only applicable during a continuity of services period.

Also, during a continuity of services period, OPM will not initiate any changes to the LIFAR (2101.370). This does not, however, exempt the Contractor from complying with statutory changes that may take effect during such a period.

The proposed regulation establishes a letter of credit (LOC) account for the Contractor (2132.170), which will be credited on the first business day of each month with one-twelfth of the estimated annual premium payment. The December payment will be credited to the LOC account no later than the last business day of each calendar year. Interest earnings on the LOC account will be made available for drawdown by the Contractor. Withdrawals from the LOC account for benefit costs of \$5,000 or more will be made on a claims-paid basis. Withdrawals from the LOC

account for benefit costs of less than \$5,000 and other FEGLI Program disbursements will be made on a checks-presented basis.

The proposed regulation clarifies the start date of the 31-day grace period that follows the date premiums are due. Since OPM cannot credit the LOC account if the first of the month falls on a non-business day, the revised regulations: (1) Define "grace period" at 2102.101 as 31 days from and including the payment due date of the first business day of the month; and (2) provide that the annual estimated premium, which will be credited to the Contractor's LOC account in 12 equal monthly installments, is due and available for drawdown on the first business day of the month. The grace period is also referenced in 2149.002, Applicability, and 2152.249-70, Renewal and termination.

Also under 2152.249-70, Renewal and termination, the Contractor agrees to reinstate the contract if termination occurs as the result of the Government's failure to make premium payments before the grace period ends due to circumstances beyond the Government's control. In such situations, the Contractor will allow an additional 5 days after the expiration of the grace period for OPM to make payment to the Contractor. Notwithstanding the above, the Contractor and OPM can agree to continue the contract.

The proposed regulation states that the Contractor is not responsible for continued performance as a result of OPM's failure to make timely premium payments. Were such a circumstance to occur, it would be unfair to expect the Contractor to continue to make benefits payments on a regular basis and subsequently seek recovery from OPM (2137.102 and 2152.237-70). This Contractor protection is included in revised policy and contract clause provisions on Termination (2149.002(b)) and Renewal and termination (2152.249-70(b)).

We believe it is unnecessary to evaluate annually a Contractor's system of internal controls under a quality assurance program. Accordingly, the language at 2146.201 provides for periodic reviews. While subsequent reviews may be limited to changes in the Contractor's internal control system, the Contractor has an ongoing obligation to fully implement its internal control system at all times.

Our current policy on subcontracting requires advance approval of subcontracts or modifications that exceed \$100,000. The proposed regulation increases the threshold to \$550,000 (2144.102 and 2152.244-

70(a)). We are also making this change in the Notice of significant events clause (2152.210-71(d)).

We are making a number of important additions and clarifying language changes to 2152.231-70, Accounting and allowable costs. We are defining cost as a chargeable cost against the contract which must meet separate cost principle tests for being actual, allowable, allocable, and reasonable. Conforming changes are being made to the definitions of "Administrative expenses" and "Investment income" so that they reference the definition of cost. We are changing the definition of "Benefits" under this section to include excess mortality charges, post-mortem conversion charges, conversion policies, and delayed settlement interest as part of payments made and costs incurred. The term "Overpayments" is being modified to "Overpayments recovered," since overpayment monies are an offset against benefits paid or incurred.

An expanded Definitions section at subpart 2102.1 includes terms used throughout the LIFAR. Editorial changes to the LIFAR correct typographical errors in the Code of Federal Regulations, provide for consistency throughout, and make the text more readable. Reference changes and updates are made to the FEGLI Clause Matrix at 2152.3 and other sections of the LIFAR, where applicable, to conform to changes in the FAR (chapter 1 of title 48, Code of Federal Regulations) since the original issuance of the LIFAR.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only the Federal life insurance Contractor.

List of Subjects in 48 CFR Parts 2101, 2102, 2103, 2104, 2105, 2109, 2110, 2115, 2116, 2131, 2132, 2137, 2144, 2146, 2149, and 2152

Advertising, Government employees, Government procurement, Life insurance.

U.S. Office of Personnel Management.

Kay Coles James,
Director.

Accordingly, OPM proposes to amend 48 CFR chapter 21, as follows:

CHAPTER 21—OFFICE OF PERSONNEL MANAGEMENT, FEDERAL EMPLOYEES' GROUP LIFE INSURANCE FEDERAL ACQUISITION REGULATION

1. The authority citation for 48 CFR parts 2101, 2102, 2103, 2104, 2105, 2109, 2110, 2115, 2116, 2131, 2132, 2137, 2144, 2146, 2149, and 2152 continues to read as follows:

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

PART 2101—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 2101.1—Purpose, Authority, Issuance

2. In section 2101.102 revise paragraph (b) to read as follows:

2101.102 Authority.

* * * * *

(b) The LIFAR does not replace or incorporate regulations found at 5 CFR part 870, which provide the substantive policy guidance for administration of the FEGLI Program under 5 U.S.C. chapter 87. The following is the order of precedence in interpreting a contract provision under the FEGLI Program:

- (1) 5 U.S.C. chapter 87.
- (2) 5 CFR part 870.
- (3) 48 CFR chapters 1 and 21.
- (4) The FEGLI Program contract.

Subpart 2101.3—Agency Acquisition Regulations

3. In section 2101.301 revise paragraph (b) to read as follows:

2101.301 Policy.

* * * * *

(b) OPM may issue internal procedures, instructions, directives, and guides to clarify or implement the LIFAR within OPM. Clarifying or implementing procedures, instructions, directives, and guides issued pursuant to this section of the LIFAR must:

(1) Be consistent with the policies and procedures contained in this chapter as implemented and supplemented from time to time; and

(2) Follow the format, arrangement, and numbering system of this chapter to the extent practicable.

4. In section 2101.370 add paragraph (e) to read as follows:

2101.370 Effective date of LIFAR amendments.

* * * * *

(e) OPM will not initiate any changes to the LIFAR during a continuity of services period, as discussed in 2152.237-70 of this chapter.

PART 2102—DEFINITIONS OF WORDS AND TERMS

Subpart 2102.1—Definitions

5. Revise section 2102.101 to read as follows:

2102.101 Definitions.

In this chapter, unless otherwise indicated, the following terms have the meaning set forth in this subpart.

Contract means a policy or policies of group life and accidental death and dismemberment insurance to provide the benefits specified by 5 U.S.C. chapter 87.

Contract price means premium.

Contract year means October 1 through September 30. Also referred to as *contract term*.

Contractor means an insurance company contracted to provide the benefits specified by 5 U.S.C. chapter 87.

Director means the Director of the Office of Personnel Management.

Employees' Life Insurance Fund means the trust fund established under 5 U.S.C. 8714.

Enrollee means the insured, or, where applicable, the assignee.

FEGLI Program means the Federal Employees' Group Life Insurance Program.

Fixed price with limited cost redetermination plus fixed fee contract means a contract which provides for:

- (1) A fixed price during the contract year with a cost element that is adjusted at the end of the contract term based on costs incurred under the contract; and
- (2) A profit or fee that is fixed at the beginning of the contract term. The amount of adjustment for costs is limited to the amount in the Employees' Life Insurance Fund. The fee will be in the form of either a risk charge or a service charge.

Grace period means 31 days from and including the payment due date of the first business day of the month.

Insurance company, as provided in 5 U.S.C. 8709, means a company licensed to transact life and accidental death and dismemberment insurance under the laws of all the States and the District of Columbia. It must have in effect, on the most recent December 31 for which information is available to the Office of Personnel Management, an amount of employee group life insurance equal to at least 1 percent of the total amount of employee group life insurance in the United States in all life insurance companies.

OPM means the United States Office of Personnel Management.

Premium means an amount intended to cover the estimated annual benefits

and administrative costs plus a fixed service or risk charge, made available to the Contractor in 12 equal installments. At the end of the contract year, a reconciliation of premiums, benefits, and other costs is performed as a limited cost redetermination.

Reinsurer means a company that reinsures portions of the total amount of insurance under the contract as specified in 5 U.S.C. 8710 and is not an agent or representative of the Contractor.

Subcontract means a contract entered into by any subcontractor that furnishes supplies or services for performance of a prime contract under the FEGLI Program. Except for the purpose of FAR subpart 22.8—Equal Employment Opportunity, the term "subcontract" does not include a contract with a reinsurer under the FEGLI Program.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor under the FEGLI Program contract. Except for the purpose of FAR subpart 22.8—Equal Employment Opportunity, the term "subcontractor" does not include reinsurers under the FEGLI Program.

PART 2103—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2103.5—Other Improper Business Practices

6. In section 2103.570 revise paragraphs (a) and (b) to read as follows:

2103.570 Misleading, deceptive, or unfair advertising.

(a) OPM, or the Contractor with the approval of OPM, makes available to Federal employees a booklet describing the provisions of the FEGLI Program, which includes information about eligibility, enrollment, and general procedures. The booklet, along with valid election documents, serves as certification of the employee's coverage under the FEGLI Program. Any marketing/advertising directed specifically at Federal employees and life insurance contacts with Federal employees for the purpose of selling FEGLI Program coverage must be approved by OPM in advance.

(b) The Contractor is prohibited from making incomplete and/or incorrect comparisons or using disparaging or minimizing techniques to compare its other products or services to those of the FEGLI Program. The Contractor agrees that any advertising material authorized and released by the Contractor which mentions the FEGLI Program will be truthful and not misleading and will

present an accurate statement of FEGLI Program benefits. The Contractor will use reasonable efforts to assure that agents selling its other products are aware of and abide by this prohibition.

* * * * *

PART 2104—ADMINISTRATIVE MATTERS

7. Add subpart 2104.9 consisting of section 2104.9001 to read as follows:

Subpart 2104.9—Taxpayer Identification Number

Sec.
2104.9001 Contract clause.

2104.9001 Contract clause.

The clause at 2152.204–70 must be inserted in all FEGLI Program contracts.

PART 2105—PUBLICIZING CONTRACT ACTIONS

Subpart 2105.70—Applicability

8. Revise section 2105.7001 to read as follows:

2105.7001 Applicability.

FAR part 5 has no practical application to the FEGLI Program because the requirements for eligible contractors (*i.e.*, qualified life insurance companies) are stated in 5 U.S.C. 8709.

PART 2106—COMPETITION REQUIREMENTS

Subpart 2106.70—Applicability

9. Revise section 2106.7001 to read as follows:

2106.7001 Applicability.

FAR part 6 has no practical application to the FEGLI Program because 5 U.S.C. chapter 87 exempts the FEGLI Program from competitive bidding.

PART 2109—CONTRACTOR QUALIFICATIONS

Subpart 2109.70—Minimum Standards for FEGLI Program Contractors

10. In section 2109.7001 revise paragraphs (a), (f), and (g) to read as follows:

2109.7001 Minimum standards for FEGLI Program Contractors.

(a) The Contractor must meet the requirements of chapter 87 of title 5, United States Code; part 870 of title 5, Code of Federal Regulations; chapter 1 of title 48, Code of Federal Regulations; and the standards in this subpart. The Contractor must continue to meet these and the following statutory and

regulatory requirements while under contract with OPM. Failure to meet these requirements and standards is cause for OPM's termination of the contract in accordance with part 2149 of this chapter.

* * * * *

(f) The Contractor agrees to enter into annual premium rate redeterminations with OPM.

(g) The Contractor must furnish such reasonable reports as OPM determines are necessary to administer the FEGLI Program. The cost of preparation of such reports will be considered an allowable expense within the administrative expense ceiling defined in 2152.231-70 of this chapter.

* * * * *

PART 2110—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Subpart 2110.70—Contract Specifications

11. Revise section 2110.7002 to read as follows:

2110.7002 Contractor investment of FEGLI Program funds.

(a) The Contractor is required to invest and reinvest all FEGLI Program funds on hand, including any attributable to the special contingency reserve (as used in 5 U.S.C. 8712), until needed to discharge promptly the obligations incurred under the contract. Within the constraints of safety and liquidity of investments, the Contractor must seek to maximize investment income. However, the Contractor will not be responsible for any actions taken at the direction of OPM.

(b) The Contractor is required to credit income earned from its investment of FEGLI Program funds to the FEGLI Program. Thus, the Contractor must be able to allocate investment income to the FEGLI Program in an appropriate manner. If the Contractor fails to invest funds on hand, properly allocate investment income, or credit any income due to the contract, for whatever reason, it must return or credit any investment income lost to OPM or the FEGLI Program, retroactive to the date that such funds should have been originally invested, allocated, or credited in accordance with the clause at 2152.210-70.

PART 2114—SEALED BIDDING

Subpart 2114.70—Applicability

12. Revise section 2114.7001 to read as follows:

2114.7001 Applicability.

FAR part 14 has no practical application to the FEGLI Program because 5 U.S.C. chapter 87 exempts the FEGLI Program from competitive bidding.

PART 2115—CONTRACTING BY NEGOTIATION

2115.106-270 [Redesignated as 2115.071]

13. Redesignate section 2115.106-270 as section 2115.071 and revise the title to read as "Specific retention periods: Contract clause."

2115.170 [Redesignated as 2115.070]

14. Redesignate section 2115.170 as section 2115.070.

15. Revise the title of subpart 2115.1, remove section 2115.106, and add a new section 2115.170 to read as follows:

Subpart 2115.1—Source Selection Processes and Techniques

2115.170 Applicability.

FAR subpart 15.1 has no practical application to the FEGLI Program because prospective contractors (insurance companies) are considered for inclusion in the FEGLI Program in accordance with criteria provided in 5 U.S.C. chapter 87, LIFAR 2109.7001, and LIFAR 2115.370.

16. Redesignate subpart 2115.4 as subpart 2115.2 and revise the title, redesignate section 2115.401 as section 2115.270, and revise paragraphs (a) and (c) to read as follows:

Subpart 2115.2—Solicitation and Receipt of Proposals and Information

2115.270 Applicability.

(a) FAR subpart 15.2 has no practical application to the FEGLI Program because 5 U.S.C. chapter 87 exempts the FEGLI Program from competitive bidding.

* * * * *

(c) Eligible contractors (*i.e.*, qualified life insurance companies) are identified in accordance with 5 U.S.C. 8709. Prospective contractors voluntarily come forth in accordance with procedures provided in 2115.370.

* * * * *

17. Redesignate subpart 2115.6 as subpart 2115.3, and redesignate section 2115.602 as section 2115.370, and revise the introductory paragraph to read as follows:

Subpart 2115.3—Source Selection

2115.370 Applicability.

FAR subpart 15.3 has no practical application to the FEGLI Program because prospective contractors

(insurance companies) are considered for inclusion in the FEGLI Program in accordance with criteria provided in 5 U.S.C. chapter 87, LIFAR 2109.7001, and the following:

* * * * *

18. Redesignate subpart 2115.8 as subpart 2115.4 and revise the title, and redesignate section 2115.802 as section 2115.402 and revise it to read as follows:

Subpart 2115.4—Contract Pricing

2115.402 Policy.

Pricing of FEGLI Program premium rates is governed by 5 U.S.C. 8707, 8708, 8711, 8714a, 8714b, and 8714c. FAR subpart 15.4 will be implemented by applying cost analysis policies and procedures. To the extent that reasonable or good faith actuarial estimates are used for pricing, such estimates will be deemed acceptable and, if inaccurate, will not constitute defective pricing.

19. Redesignate section 2115.902 as section 2115.404-70, revise the title, and revise paragraph (b)(2) to read as follows:

2115.404-70 Profit.

* * * * *

(b) * * *

(2) Once agreement to relinquish the risk charge is made, the agreement may not be cancelled unless OPM and the Contractor mutually agree to reinstitute payment of a risk charge; or unless the Fund balance falls below the level defined in 2115.404-70(a) and 30 days' notice of cancellation is provided; or unless the Contractor or OPM provides notice of cancellation for any reason 1 year prior to the date cancellation is sought.

* * * * *

20. Redesignate section 2115.905 as section 2115.404-71 and revise it to read as follows:

2115.404-71 Profit analysis factors.

(a) The OPM Contracting Officer will apply a weighted guidelines method when developing the prenegotiation objective (service charge) for the FEGLI Program contract. In accordance with the factors defined in FAR 15.404-4(d), OPM will apply the appropriate weights derived from the ranges specified in paragraph (b) of this section and will determine the prenegotiation objective based on the total dollar amount of the Contractor's Basic and Option C (family optional insurance) claims paid in the previous contract year.

(1) *Contractor performance.* OPM will consider such elements as the accurate and timely processing of benefit claims,

the volume and validity of complaints received by OPM, effectiveness of internal controls systems in place, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress as measures of economical and efficient contract performance. This factor will be judged apart from the Contractor's *basic* responsibility for contract compliance and will be a measure of the extent and nature of the Contractor's contribution to the FEGLI Program through the application of managerial expertise and effort. Evidence of effective contract performance will receive a plus weight, and poor performance or failure to comply with contract terms and conditions a zero weight. Innovations of benefit to the FEGLI Program will generally receive a plus weight; documented inattention or indifference to effective operations, a zero weight.

(2) *Contract cost risk.* OPM will evaluate the Contractor's risk annually in relation to the amount in the Employees' Life Insurance Fund and will evaluate this factor accordingly.

(3) *Federal socioeconomic programs.* OPM will consider documented evidence of successful Contractor-initiated efforts to support such Federal socioeconomic programs as drug and substance abuse deterrents and other concerns of the type enumerated in FAR 15.404-4(d)(1)(iii) as a factor in negotiating profit. This factor will be related to the quality of the Contractor's policies and procedures and the extent of exceptional effort or achievement demonstrated. Evidence of effective support of Federal socioeconomic programs will result in a plus weight; indifference to Federal socioeconomic programs will result in a zero weight; and only deliberate failure to provide opportunities to persons and organizations that would benefit from these programs will result in a negative weight.

(4) *Capital investments.* This factor is generally not applicable to FEGLI Program contracts because facilities capital cost of money may be an allowable administrative expense. Generally, this factor will be given a weight of zero. However, special purpose facilities or investment costs of direct benefit to the FEGLI Program that are not recoverable as allowable or allocable administrative expenses may be taken into account in assigning a plus weight.

(5) *Cost control.* This factor is based on the Contractor's previously demonstrated ability to perform effectively and economically. In addition, consideration will be given to

measures taken by the Contractor that result in productivity improvements and other cost containment accomplishments that will be of future benefit to the FEGLI Program. Examples are containment of costs associated with processing claims; success at preventing waste, loss, unauthorized use, or misappropriation of FEGLI Program assets; and success at limiting and recovering erroneous benefit payments.

(6) *Independent development.* Consideration will be given to independent Contractor-initiated efforts, such as the development of a unique and enhanced customer support system, that are of demonstrated value to the FEGLI Program and for which developmental costs have not been recovered directly or indirectly through allowable or allocable administrative expenses. This factor will be used to provide additional profit opportunities based upon an assessment of the Contractor's investment and risk in developing techniques, methods, practices, etc., having viability to the Program at large. Improvements and innovations recognized and rewarded under any other profit factor cannot be considered.

(7) *Transitional services.* This factor is based on the Contractor's performance of transitional activities during a continuity of services period as described in the clause at 2152.237-70 of this chapter. These are any activities apart from the normal servicing of the contract during an active contract term. Other than for a transitional period, the weight applied to this factor for any active contract term is zero.

(b) The weight ranges for each factor to be used in the weighted guidelines approach are set forth in the following table:

Profit factor	Weight ranges
1. Contractor performance.	0 to +.0005
2. Contract cost risk ...	+.000001 to +.00001
3. Federal socioeconomic programs.	-.00003 to +.00003
4. Capital investment ..	0 to +.00001
5. Cost control	-.0002 to +.0002
6. Independent development.	0 to +.00003
7. Transitional services	0 to +.0007

Subpart 2115.9—[Removed]

20a. Remove subpart 2115.9.

PART 2116—TYPES OF CONTRACTS

Subpart 2116.2—Fixed Price Contracts

21. Revise section 2116.270 to read as follows:

2116.270 FEGLI Program contracts.

FEGLI Program contracts are fixed price with limited cost redetermination plus fixed fee. The premium paid to the Contractor is mutually agreed upon by OPM and the Contractor and is based on an estimate of benefits and administrative costs, plus the fixed service or risk charge, and is determined annually. Claims costs, including benefits and administrative expenses, in excess of premiums are paid up to the amount in the Employees' Life Insurance Fund. Payment for costs exceeding the amount in the Fund are the responsibility of the Contractor and reinsurers. The fee is fixed at the inception of each contract year. The fee does not vary with the actual costs but may be adjusted as a result of changes in the work to be performed under the contract. The fee is in the form of either a risk charge or a service charge.

(a) *Risk charge.* The risk charge will be determined as prescribed in 5 U.S.C. 8711(d) and 2115.404-70 of this chapter. It will consist of a negotiated amount which will reflect the risk assumed by the Contractor and the reinsurers and may be adjusted as a result of increased or decreased risk under the contract. When the applicable fee is a risk charge, no service charge will be paid for the same period of time.

(b) *Service charge.* The amount of the service charge will be determined using a weighted guidelines structured approach in accordance with 2115.404-71 of this chapter and negotiated with the Contractor at the beginning of the contract term. When the applicable fee is a service charge, no risk charge will be paid for the same period of time.

PART 2131—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 2131.1—Applicability

22. Revise section 2131.109 to read as follows:

2131.109 Advance agreements.

FAR 31.109 is applicable to FEGLI Program contracts, except that precontract costs and nonrecurring costs that exceed \$100,000 will not be allowed in the absence of an advance agreement between OPM and any potential FEGLI Contractor.

Subpart 2131.2—Contracts with Commercial Organizations

23. Revise section 2131.203 to read as follows:

2131.203 Indirect costs.

The provisions of FAR 31.203 apply to the allocation of indirect costs.

24. Revise section 2131.205–32 to read as follows:

2131.205–32 Precontract costs.

Precontract costs will be allowable in accordance with FAR part 31, but precontract costs that exceed \$100,000 will not be allowable except to the extent allowable under an advance agreement negotiated in accordance with 2131.109 of this chapter.

25. Revise section 2131.205–38 to read as follows:

2131.205–38 Selling costs.

Selling costs are not allowable costs to FEGLI contracts except to the extent that they are attributable to conducting contract negotiations with the Government and for liaison activities involving ongoing contract administration, including the conduct of informational and enrollment activities as directed or approved by the Contracting Officer.

PART 2132—CONTRACT FINANCING

Subpart 2132.1—General

26. Revise section 2132.170 to read as follows:

2132.170 Recurring premium payments to Contractors.

(a) OPM will make payments on a letter of credit (LOC) basis. OPM and the Contractor will concur on an estimate of benefits and administrative costs plus the fixed service or risk charge for the forthcoming contract year, as specified in the contract. The annual premium to the Contractor, based on this estimate, will be credited to the Contractor's LOC account in 12 equal monthly installments due on the first business day of each month and available for drawdown. OPM will credit the Contractor's LOC account for the December payment no later than the last business day of each calendar year. Following the close of the contract year, a reconciliation of premiums, benefits, and other costs will be performed as a limited cost redetermination. In addition, interest distribution payments will be made available for Contractor drawdown from the LOC account. The Contractor will use the LOC account in accordance with guidelines issued by OPM.

(b) Withdrawals from the LOC account for benefit costs of \$5,000 or more will be made on a claims-paid basis. Withdrawals from the LOC account for benefit costs of less than \$5,000 and other FEGLI Program disbursements will be made on a checks-presented basis. Under a checks-presented basis, drawdown on the LOC

is delayed until the checks issued for FEGLI Program disbursements are presented to the Contractor's bank for payment.

(c) Nothing in this section will affect the ability of the Contractor to hold the special contingency reserve established and maintained in accordance with the terms of 5 U.S.C. 8712.

Subpart 2132.7—Contract Funding

27. Revise section 2132.771 to read as follows:

2132.771 Non-commingling of FEGLI Program funds.

(a) FEGLI Program funds must be maintained in such a manner as to be separately identifiable from other assets of the Contractor. Cash and investment balances reported on the FEGLI Program Annual Financial Report must be supported by the Contractor's books and records.

(b) This requirement may be modified by the Contracting Officer in accordance with the clause at 2152.232–71 of this chapter when adequate accounting and other controls are in effect. If the requirement is modified, such modification will remain in effect until rescinded by OPM.

PART 2137—SERVICE CONTRACTING

Subpart 2137.1—Service Contracts—General

28. Revise section 2137.102 to read as follows:

2137.102 Policy.

(a) The services under this contract are of vital interest to the Government and must be continued without interruption in the event the contract is terminated, unless the termination occurs as a result of OPM's failure to pay premiums on a timely basis.

(b) The Contractor will be reimbursed for all reasonable phase-in and phase-out costs (*i.e.*, costs incurred within the agreed-upon period after contract termination that result from phase-in and phase-out operations). The Contractor also will receive a risk or service charge for the full period after contract termination during which services are continued, not to exceed a pro rata portion of the risk or service charge for the final contract year. In addition, OPM will pay the Contractor an incentive amount, not to exceed the pro rata risk or service charge for the continuity of services period (LIFAR 2152.237–70), based on exceptional performance during the transition period to a new Contractor. The Contracting Officer will use the weighted guidelines method described

in 2115.404–71 of this chapter in determining the incentive amount. The amount of the risk or service charge will be based upon the accurate and timely processing of benefit claims, the volume and validity of customer service complaints, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, insured individuals, beneficiaries, and Congress.

PART 2144—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 2144.1—General

29. Revise section 2144.102 to read as follows:

2144.102 Policy.

For all FEGLI Program contracts, the Contracting Officer's advance approval will be required on subcontracts or modifications to subcontracts when the cost of that portion of the subcontract that is charged the FEGLI Program contract exceeds \$550,000 and is at least 25 percent of the total cost of the subcontract.

PART 2146—QUALITY ASSURANCE

Subpart 2146.2—Contract Quality Requirements

30. In section 2146.201 revise paragraph (b) to read as follows:

2146.201 General.

* * * * *

(b) OPM will make an initial evaluation of the Contractor's system of internal controls under the quality assurance program required by 2146.270 of this chapter and will acknowledge in writing whether or not the system is consistent with the requirements set forth in this subpart. After the initial review, subsequent periodic reviews may be limited to changes in the Contractor's internal control guidelines. However, a limited review does not diminish the Contractor's obligation to apply the full internal control system.

31. In section 2146.270 revise paragraph (b) to read as follows:

2146.270 FEGLI Program quality assurance requirements.

* * * * *

(b) The Contractor must prepare overpayment recovery guidelines to include a system of internal controls.

* * * * *

PART 2149—TERMINATION OF CONTRACTS

32. Revise section 2149.002 to read as follows:

2149.002 Applicability.

(a) *Termination.* (1) Termination of FEGLI Program contracts is controlled by 5 U.S.C. 8709(c) and this chapter. The procedures for termination of FEGLI Program contracts are contained in FAR part 49. For the purpose of this part, “terminate” means to “discontinue” as used in 5 U.S.C. 8709(c).

(2) A life insurance contract entered into by OPM may be terminated by OPM at any time for default by the Contractor in accordance with the provisions of FAR parts 49 and 52.249–8. A life insurance contract entered into by OPM may be terminated by the Contractor at the end of the grace period, after default for nonpayment by OPM. Notwithstanding the preceding sentence, the Contractor will allow OPM an additional 5 days after the end of the grace period to make payment if the failure to make payment was inadvertent and/or due to circumstances beyond the Government’s control.

(3) A life insurance contract entered into by OPM may be terminated for convenience of the Government 60 days after the Contractor’s receipt of OPM’s written notice to terminate.

(4) The Contractor may terminate its contract with OPM at the end of any contract year when notice of intent to terminate is given to OPM in writing at least 60 days prior to the end of the contract year (*i.e.*, no later than July 31).

(b) *Continuation of services.* The services under this contract are of vital interest to the Government and must be continued without interruption in the event the contract is terminated for the Contractor’s default or OPM’s convenience. Consequently, the contract termination procedures contained in this paragraph must be used in conjunction with 2137.102 of this chapter, 2137.110 of this chapter, and the provisions of the “Continuity of Services” clause at 2152.237–70 of this chapter. The Contractor is not required to continue performance subsequent to OPM’s default for failure to pay premiums in accordance with the provisions of the clause at 2152.249–70(b).

(c) *Settlement.* The procedures for settlement of contracts after they are terminated are those contained in FAR part 49.

PART 2152—PRECONTRACT PROVISIONS AND CONTRACT CLAUSES

33. In section 2152.070 revise the listing under Section and Clause Title to read as follows:

2152.070 Applicable clauses.

* * * * *

Section and Clause Title

52.202–1 Definitions
 52.203–3 Gratuities
 52.203–5 Covenant against Contingent Fees
 52.203–6 Restrictions on Subcontractor Sales to the Government
 52.203–7 Anti-Kickback Procedures
 52.203–12 Limitation on Payments To Influence Certain Federal Transactions
 52.209–6 Protecting the Government’s Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment
 52.215–2 Audit and Records—Negotiation
 52.215–10 Price Reduction for Defective Cost or Pricing Data
 52.215–12 Subcontractor Cost or Pricing Data
 52.215–15 Pension Adjustments and Asset Reversions
 52.215–16 Facilities Capital Cost of Money
 52.215–17 Waiver of Facilities Capital Cost of Money
 52.215–18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions
 52.219–8 Utilization of Small Business Concerns
 52.222–1 Notice to the Government of Labor Disputes
 52.222–3 Convict Labor
 52.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation
 52.222–21 Prohibition of Segregated Facilities
 52.222–22 Previous Contracts and Compliance Reports
 52.222–25 Affirmative Action Compliance
 52.222–26 Equal Opportunity
 52.222–29 Notification of Visa Denial
 52.222–35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
 52.222–36 Affirmative Action for Workers with Disabilities
 52.222–37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
 52.223–6 Drug-Free Workplace
 52.227–1 Authorization and Consent
 52.227–2 Notice and Assistance regarding Patent and Copyright Infringement
 52.228–7 Insurance—Liability to Third Persons
 52.232–9 Limitation on Withholding of Payments
 52.232–17 Interest
 52.232–23 Assignment of Claims
 52.232–33 Payment by Electronic Funds Transfer—Central Contractor Registration
 52.233–1 Disputes (Alternate I)
 52.242–1 Notice of Intent To Disallow Costs
 52.242–3 Penalties for Unallowable Costs
 52.242–13 Bankruptcy
 52.244–5 Competition in Subcontracting
 52.245–2 Government Property (Fixed-Price Contracts)
 52.246–4 Inspection of Services—Fixed Price
 52.246–25 Limitation of Liability—Services
 52.247–63 Preference for U.S.-Flag Air Carriers

52.249–2 Termination for Convenience of the Government (Fixed Price)
 52.249–8 Default (Fixed Price Supply and Service)
 52.249–14 Excusable Delays
 52.251–1 Government Supply Sources
 52.252–4 Alterations in Contract
 52.252–6 Authorized Deviations in Clauses

34. Revise section 2152.203–70 to read as follows:

2152.203–70 Misleading, deceptive, or unfair advertising.

As prescribed in 2103.571, insert the following clause:

Misleading, Deceptive, or Unfair Advertising (Oct 2005)

The Contractor agrees that any advertising material authorized and released by the Contractor which mentions the FEGLI Program must be truthful and not misleading and must present an accurate statement of FEGLI Program benefits. The Contractor is prohibited from making incomplete and/or incorrect comparisons or using disparaging or minimizing techniques to compare its other products or services to those of the FEGLI Program. The Contractor agrees to use reasonable efforts to assure that agents selling its other products are aware of and abide by this provision. The Contractor agrees to incorporate this clause in all subcontracts as defined at LIFAR 2102.101.

(End of Clause)

35. Add a new section 2152.204–70 to read as follows:

2152.204–70 Taxpayer Identification Number.

As prescribed in 2104.9001, insert the following clause:

Taxpayer Identification Number (Oct 2005)

(a) Definitions.
Common parent, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Contractor is a member.

Taxpayer Identification Number (TIN), as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the Contractor in reporting income tax and other returns. The TIN is the Contractor’s Social Security Number.

(b) The Contractor must submit the information required in paragraphs (d) through (f) of this clause to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. The Contractor is subject to the payment reporting requirements described in FAR 4.904. The Contractor’s failure or refusal to furnish the information will result in payment being withheld until the TIN is provided.

(c) The Government may use the TIN to collect and report on any delinquent amounts arising out of the Contractor’s relationship

with the Government (31 U.S.C. 7701(c)(3)). The TIN provided hereunder may be matched with IRS records to verify its accuracy.

(d) Taxpayer Identification Number (TIN).
TIN: _____

(e) Type of organization.

- Corporate entity (tax-exempt);
 Other _____

(f) Common parent.

Contractor is not owned or controlled by a common parent as defined in paragraph (a) of this clause.

Name and TIN of common parent:

Name _____
TIN _____

(End of Clause)

36. In section 2152.210-70 revise the clause title date, and revise paragraphs (a), (c), and (d)(2) to read as follows:

2152.210-70 Investment income.

Investment Income (Oct 2005)

(a) The Contractor must invest and reinvest all FEGLI Program funds on hand until needed to discharge promptly the obligations incurred under the contract. Within the constraints of safety and liquidity of investments, the Contractor must seek to maximize investment income. However, the Contractor will not be responsible for any actions taken at the direction of OPM.

* * * * *

(c) When the Contracting Officer concludes that the Contractor failed to comply with paragraph (a) or (b) of this clause, the Contractor must pay to OPM the investment income that would have been earned, at the rate(s) specified in paragraph (d) of this clause, had it not been for the Contractor's noncompliance. *Failed to comply with paragraph (a) or (b) of this clause* means:

(1) Making any charges against the contract which are not actual, allowable, allocable, or reasonable; or

(2) Failing to credit any income due the contract and/or failing to place funds on hand, including premium payments and payments from OPM not needed to discharge promptly the obligations incurred under the contract, tax refunds, credits, deposits, investment income earned, uncashed checks, or other amounts owed OPM in income-producing investments and accounts.

(d) * * *

(2) Investment income lost by the Contractor as a result of failure to credit income due under the contract or failure to place funds on hand in income-producing investments and accounts must be paid from the date the funds should have been invested or appropriate income was not credited and will end on the earlier of:

(i) The date the amounts are returned to OPM;

(ii) The date specified by the Contracting Officer; or

(iii) The date of the Contracting Officer's final decision.

* * * * *

37. In section 2152.210-71 revise the clause title date, and revise paragraphs (a)(3), (a)(5), (a)(6), (a)(11), (b), and (d) to read as follows:

2152.210-71 Notice of significant events.

As prescribed in 2110.7004(b), insert the following clause:

Notice of Significant Events (Oct 2005)

(a) * * *

(3) Loss of 20 percent or more of FEGLI Program reinsurers in a contract year;

* * * * *

(5) The withdrawal of, or notice of intent to withdraw, by any State or the District of Columbia, its license to do life insurance business or any other change of life insurance status under State law;

(6) The Contractor's material default on a loan or other financial obligation;

* * * * *

(11) Any written exceptions, reservations, or qualifications expressed by the independent accounting firm contracted with by the Contractor to provide an audit opinion on the annual financial report required by OPM for the FEGLI Program. (Accounting firm employees must be members of the American Institute of Certified Public Accountants and must audit the report in accordance with Generally Accepted Government Auditing Standards or other requirements issued by OPM.)

(b) Upon learning of a significant event, OPM may institute action, in proportion to the seriousness of the event, to protect the interest of insureds, including, but not limited to—

(1) Directing the Contractor to take corrective action; or

(2) Making a downward adjustment to the weight in the "Contractor Performance" factor of the service charge.

* * * * *

(d) The Contractor agrees to insert this clause in any subcontract or subcontract modification when the amount of the subcontract or modification that is charged to the FEGLI Program contract exceeds \$550,000 and is at least 25 percent of the total cost of the subcontract.

(End of Clause)

38. Revise section 2152.215-70 to read as follows:

2152.215-70 Contractor records retention.

As prescribed in 2115.071, insert the following clause:

Contractor Records Retention (Oct 2005)

Notwithstanding the provisions of FAR 52.215-2(f), "Audit and Records—Negotiation," the Contractor must retain and make available all records applicable to a contract term that support the annual financial report for a period of 5 years after the end of the contract term to which the records relate. Claim records must be maintained for 10 years after the end of the contract term to which the claim records relate. If the Contractor chooses to maintain paper documents in electronic format, the electronic version must be an exact replica of the paper document.

(End of Clause)

39. Revise section 2152.216-70 to read as follows:

2152.216-70 Fixed price with limited cost redetermination—risk charge.

As prescribed in 2116.270-1(a), insert the following clause when a risk charge is negotiated:

Fixed Price With Limited Cost Redetermination Plus Fixed Fee Contract—Risk Charge (Oct 2005)

(a) This is a fixed price with limited cost redetermination plus fixed fee contract, with the fixed fee in the form of a risk charge. OPM will pay the Contractor the risk charge as specified in a letter from the Contracting Officer.

(b) At the Contractor's request, OPM will furnish, during the third quarter of the current contract year, an accounting of the funds in the Employees' Life Insurance Fund as of the end of the second quarter of the contract year.

(End of Clause)

40. Revise section 2152.216-71 to read as follows:

2152.216-71 Fixed price with limited cost redetermination—service charge.

As prescribed in 2116.270-1(b), insert the following clause when a service charge is negotiated:

Fixed Price With Limited Cost Redetermination Plus Fixed Fee Contract—Service Charge (Oct 2005)

(a) This is a fixed price with limited cost redetermination plus fixed fee contract, with the fixed fee in the form of a service charge. OPM will pay the Contractor the service charge as specified in a letter from the Contracting Officer.

(b) At the Contractor's request, OPM will furnish, during the third quarter of the current contract year, an accounting of the funds in the Employees' Life Insurance Fund as of the end of the second quarter of the contract year.

(End of Clause)

41. In section 2152.224-70 revise the clause title date, and revise paragraph (a) to read as follows:

2152.224-70 Confidentiality of records.

* * * * *

Confidentiality of Records (Oct 2005)

(a) The Contractor will use the personal data on employees and annuitants that is provided by agencies and OPM, including social security numbers, for only those routine uses stipulated for the data and published in the **Federal Register** as part of OPM's notice of systems of records.

* * * * *

42. Revise section 2152.231-70 to read as follows:

2152.231-70 Accounting and allowable cost.

As prescribed in 2131.270, insert the following clause:

Accounting and Allowable Cost (Oct 2005)

(a) *Annual Financial Report.* (1) The Contractor must prepare annually a financial

report summarizing the financial operations of the FEGLI Program for the previous contract year. This report will be due to OPM in accordance with a date established by OPM's requirements.

(2) The Contractor must have the most recent financial report for the FEGLI Program audited by an independent public accounting firm, whose employees are members of the American Institute of Certified Public Accountants. The audit must be performed in accordance with Generally Accepted Government Auditing Standards or other requirements issued by OPM. The report by the independent accounting firm on its audit must be submitted to OPM along with the annual financial report.

(3) Based on the results of either the independent audit or a Government audit, the FEGLI contract may be:

(i) Adjusted by amounts found not to constitute chargeable costs; or

(ii) Adjusted for prior overpayments or underpayments.

(b) *Definition of costs.* (1) A cost is chargeable to the contract for a contract term if it is:

(i) An actual, allowable, allocable, and reasonable cost;

(ii) Incurred with proper justification and accounting support;

(iii) Determined in accordance with subpart 31.2 of the Federal Acquisition Regulation (FAR) and subpart 2131.2 of the Federal Employees' Group Life Insurance Acquisition Regulation (LIFAR) applicable on October 1 of each year; and

(iv) Determined in accordance with the terms of this contract.

(2) In the absence of specific contract terms to the contrary, contract costs will be classified in accordance with the following criteria:

(i) *Benefits.* Claims costs consist of payments made and costs incurred (including delayed settlement interest) by the Contractor for life insurance, accidental death and dismemberment insurance, excess mortality charges, post-mortem conversion charges, and conversion policies on behalf of insured persons, less any overpayments recovered (subject to the terms of LIFAR 2131.205-3), refunds, or other credits received.

(ii)(A) *Administrative expenses.* Administrative expenses consist of chargeable costs as defined in paragraph (b)(1) of this clause incurred in the adjudication of claims or incurred in the Contractor's overall operation of the business. Unless otherwise provided in the contract, FAR, or LIFAR, administrative expenses include, but are not limited to, taxes, service charges to reinsurers, the cost of investigation and settlement of policy claims, the cost of maintaining records regarding payment of claims, and legal expenses incurred in the litigation of benefit payments. Administrative expenses exclude the expenses related to investment income in paragraph (b)(2)(iii) of this clause.

(B) *Administrative Expense Ceiling.* Each year an administrative expense ceiling for the following contract year is calculated based on the prior contract year's administrative expense ceiling, adjusted by the percentage

change in the average monthly consumer Price Index for All Urban Consumers for the preceding 12 months. Administrative expenses are reimbursed up to the administrative expense ceiling or actual costs, whichever is less. Both parties will reexamine the base, including the prior year's actual expenses, at the request of either OPM or the Contractor. Within the administrative expense ceiling is a separately negotiated limit for indirect costs that may be charged against the ceiling for the contract year. The Contractor agrees to provide annually to the Contracting Officer a detailed report of direct and indirect administrative costs which form the basis for determining the limit on indirect costs for the following contract year. During a continuity of services period, OPM and the Contractor will negotiate a one-time increase in the administrative expense ceiling to cover phase-in/phase-out costs. Costs that exceed the revised ceiling must be submitted by the Contractor, in writing and in advance of their incurrence, to the Contracting Officer for approval.

(iii) *Investment income.* Investment income represents the amount earned by the Contractor after deducting chargeable investment expenses. Investment expenses are those chargeable contract costs, as defined in paragraph (b)(1) of this clause, which are attributable to the investment of FEGLI funds.

(c) *Certification of Annual Financial Report.* (1) The Contractor must certify the annual financial report in the form set forth in paragraph (c)(2) of this clause. The certificate must be signed by the chief executive officer for the Contractor's FEGLI Program operations and the chief financial officer for the Contractor's FEGLI Program operations and must be returned with the annual financial report.

(2) The certification required must be in the following form:

Certification of Annual Financial Report

This is to certify that I have reviewed this financial report and, to the best of my knowledge and belief, attest that:

1. The report was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this contract year in conformity with those guidelines;

2. The costs included in the report are actual, allowable, allocable, and reasonable in accordance with the terms of the contract and with the cost principles of the Federal Employees' Group Life Insurance Program Acquisition Regulation (LIFAR) and the Federal Acquisition Regulation (FAR);

3. Income, overpayments, refunds, and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the report.

(End of clause)

43. Revise section 2152.232-70 to read as follows:

2152.232-70 Payments.

As prescribed in 2132.171, insert the following clause:

Payments (Oct 2005)

(a) OPM will make available to the Contractor, in full settlement of its obligations under this contract, subject to adjustment based on actual claims and administrative cost, a fixed premium once per month on the first business day of the month. The premium is determined by an estimate of costs for the contract year as provided in Section _____ and is redetermined annually by mutual agreement of OPM and the Contractor. In addition, an annual reconciliation of premiums, benefits, and other costs is performed, and additional payment by OPM or reimbursement by the Contractor is paid as necessary.

(b) If OPM fails to fund the Letter of Credit (LOC) account for the full amount of premium due by the due date, a grace period of 31 days will be granted to OPM for providing any premium due, unless OPM has previously given written notice to the Contractor that the contract is to be discontinued. The contract will continue in force during the grace period.

(c) If OPM fails to fund the LOC account for any premiums within the grace period, the contract may be terminated at the end of the 31st day of the grace period in accordance with LIFAR 2149.002(a)(2). If during the grace period OPM presents written notice to the Contractor that the contract is to be terminated before the expiration of the grace period, the contract will be terminated the later of the date of receipt of such written notice by the Contractor or the date specified by OPM for termination. In either event, OPM will be liable to the Contractor for all premiums then due and unpaid.

(d) In accordance with LIFAR 2143.205 and LIFAR 2252.243-70, Changes, if a change is made to the contract that increases or decreases the cost of performance of the work under this contract, the Contracting Officer will make an equitable adjustment to the payments under this contract.

(e) In the event this contract is terminated in accordance with LIFAR part 2149, the special contingency reserve held by the Contractor will be available to pay the necessary and proper charges against this contract after other Program assets held by the Contractor are exhausted.

(End of Clause)

44. Revise section 2152.232-71 to read as follows:

2152.232-71 Non-commingling of FEGLI Program funds.

As prescribed in 2132.772, insert the following clause:

Non-Commingling of Funds (Oct 2005)

(a) The Contractor must maintain FEGLI Program funds in such a manner as to be separately identifiable from other assets of the Contractor.

(b) The Contractor may request a modification of paragraph (a) of this clause from the Contracting Officer. The modification must be requested, and approved by the Contracting Officer, in advance of any change, and the Contractor must demonstrate that accounting techniques have been established that clearly measure

FEGLI Program cash and investment income (*i.e.*, subsidiary ledgers). Reconciliations between amounts reported and actual amounts shown in accounting records must be provided as supporting schedules to the annual financial report.

(End of Clause)

45. In section 2152.237–70 revise the clause title date, and revise paragraphs (a), (c), and (d) to read as follows:

2152.237–70 Continuity of services.

* * * * *

Continuity of Services (Oct 2005)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption. The Contractor further recognizes that upon contract expiration or termination, including termination by the Contractor for OPM's failure to make timely premium payments, a successor, either the Government or another Contractor, may continue them. The Contractor agrees to furnish phase-in training and exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

* * * * *

(c) The Contractor must allow as many experienced personnel as practicable to remain on the job during the transition period to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also must, except if prohibited by applicable law, disclose necessary personnel records and allow the successor to conduct onsite interviews with these employees. If selected employees are agreeable to the change, the Contractor must release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor will be reimbursed for all reasonable phase-in, phase-out costs (*i.e.*, costs incurred within the agreed period after contract termination that result from phase-in and phase-out operations) in accordance with the provisions of the administrative expense ceiling in the clause at 2152.231–70(b)(2)(ii)(B) and a risk charge or a service charge (profit) not to exceed a pro rata portion of the risk or service charge under this contract. The amount of profit will be based upon the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress. In setting the final profit figure, obstacles overcome by the Contractor during the phase-in and phase-out period will be taken into consideration. OPM will pay an incentive amount to the Contractor not to exceed the pro rata risk or service charge for the continuity of services period, if the Contractor has performed exceptionally during the transition period to a new

Contractor. The Contracting Officer uses the weighted guidelines method described in LIFAR 2115.404–71 in determining the incentive amount.

(End of Clause)

46. In section 2152.243–70 revise the clause title date, and revise paragraphs (a)(1), (a)(2), and (c) to read as follows:

2152.243–70 Changes.

* * * * *

Changes (Oct 2005)

(a) * * *

(1) Description of services to be performed;
(2) Time of performance (*i.e.*, hours of the day, days of the week, etc.);

* * * * *

(c) The Contractor 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.

* * * * *

47. In section 2152.244–70 revise the clause title date, and revise paragraphs (a) and (f) to read as follows:

2152.244–70 Subcontracts.

* * * * *

Subcontracts (October 2005)

(a) The Contractor must notify the Contracting Officer reasonably in advance of entering into any subcontract or subcontract modification, or as otherwise specified by this contract, when the cost of that portion of the subcontract that is charged the FEGLI Program contract exceeds \$550,000 and is at least 25 percent of the total cost of the subcontract.

* * * * *

(f) 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 provisions of Section _____.

* * * * *

48. In section 2152.246–70 revise the clause title date, and revise paragraph (b) to read as follows:

2152.246–70 Quality assurance requirements.

* * * * *

Quality Assurance Requirements (Oct 2005)

* * * * *

(b) The Contractor must keep complete records of its quality assurance procedures

and the results of their implementation and make them available to an authorized Government entity during contract performance and for 5 years after the end of the contract term to which the records relate.

* * * * *

49. In section 2152.249–70 revise the clause title date, and revise paragraphs (b) and (d) to read as follows:

2152.249–70 Renewal and termination.

* * * * *

Renewal and Termination (Oct 2005)

* * * * *

(b) This contract may be terminated by OPM at any time in accordance with FAR part 49 and FAR 52.249–8 for default by the Contractor. This contract terminates at the end of the grace period if the Government does not fund the LOC account for any of the premium due to the Contractor (see LIFAR 2149.002(a)(2)). However, the Contractor and OPM may agree to continue the contract. In addition, the Contractor agrees to reinstate the contract if termination: (1) Arose out of the Government's inadvertent failure to fund the LOC account for the amount of the premium payment prior to the expiration of the grace period as defined in LIFAR 2102.101, and/or (2) was due to circumstances beyond the Government's control, provided that the LOC account is funded in the amount of the premium payment due to the Contractor within 5 days after the expiration of the grace period. In the event of such reinstatement, OPM will equitably adjust the payments due under the contract to compensate the Contractor for any increased costs of performance that result from the Government's failure to fund the LOC account prior to the expiration of the grace period and/or such reinstatement.

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(d) Upon termination of the contract for Contractor's default or OPM's convenience, the Contractor agrees to assist OPM with an orderly and efficient transition to a successor in accordance with LIFAR 2137.102, LIFAR 2137.110, and the provisions of the "Continuity of Services" clause at 2152.237–70. The Contractor is not required to continue performance subsequent to OPM's failure to fund the LOC account for premiums due under paragraph (b) of this clause.

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Subpart 2152.3—Provision and Clause Matrix

50. In section 2152.370 revise the FEGLI Program Clause Matrix to read as follows:

2152.370 Use of the matrix.

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FEGLI PROGRAM CLAUSE MATRIX

Clause No.	Text reference	Title	Use status
FAR 52.202-1	FAR 2.201	Definitions	M
FAR 52.203-3	FAR 3.202	Gratuities	M
FAR 52.203-5	FAR 3.404	Covenant against Contingent Fees	M
FAR 52.203-6	FAR 3.503-2	Restrictions on Subcontractor Sales to the Government	M
FAR 52.203-7	FAR 3.502-3	Anti-Kickback Procedures	M
FAR 52.203-12	FAR 3.808	Limitation on Payments to Influence Certain Federal Transactions.	M
2152.203-70	2103.571	Misleading, deceptive, or unfair advertising	M
2152.204-70	2104.9001	Taxpayer Identification Number	M
FAR 52.209-6	FAR 9.409(b)	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.	M
2152.209-71	2109.409(b)	Certification regarding debarment, suspension, proposed debarment and other responsibility matters.	M
2152.210-70	2110.7004(a)	Investment income	M
2152.210-71	2110.7004(b)	Notice of significant events	M
FAR 52.215-2	FAR 15.209(b)	Audit and Records—Negotiation	M
FAR 52.215-10	FAR 15.408(b)	Price Reduction for Defective Cost or Pricing Data	M
FAR 52.215-12	FAR 15.408(d)	Subcontractor Cost or Pricing Data	M
FAR 52.215-15	FAR 15.408(g)	Pension Adjustments and Asset Reversions	M
FAR 52.215-16	FAR 15.408(h)	Facilities Capital Cost of Money	M
FAR 52.215-17	FAR 15.408(i)	Waiver of Facilities Capital Cost of Money	A
FAR 52.215-18	FAR 15.408(j)	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) other than Pensions.	A
2152.215-70	2115.071	Contractor records retention	M
2152.216-70	2116.270-1(a)	Fixed price with limited cost redetermination—risk charge	A
2152.216-71	2116.270-1(b)	Fixed price with limited cost redetermination—service charge	A
FAR 52.219-8	FAR 19.708(a)	Utilization of Small Business Concerns	M
FAR 52.222-1	FAR 22.103-5(a)	Notice to the Government of Labor Disputes	M
FAR 52.222-3	FAR 22.202	Convict Labor	M
FAR 52.222-4	FAR 22.305	Contract Work Hours and Safety Standards Act—Overtime Compensation.	M
FAR 52.222-21	FAR 22.810(a)(1)	Prohibition of Segregated Facilities	M
FAR 52.222-22	FAR 22.810(a)(2)	Previous Contracts and Compliance Reports	M
FAR 52.222-25	FAR 22.810(d)	Affirmative Action Compliance	M
FAR 52.222-26	FAR 22.810(e)	Equal Opportunity	M
FAR 52.222-29	FAR 22.810(g)	Notification of Visa Denial	A
FAR 52.222-35	FAR 22.1310(a)(1)	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.	M
FAR 52.222-36	FAR 22.1408(a)	Affirmative Action for Workers with Disabilities	M
FAR 52.222-37	FAR 22.1310(b)	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.	M
FAR 52.223-6	FAR 23.505	Drug-Free Workplace	M
2152.224-70	2124.104-70	Confidentiality of records	M
FAR 52.227-1	FAR 27.201-2(a)	Authorization and Consent	M
FAR 52.227-2	FAR 27.202-2	Notice and Assistance regarding Patent and Copyright Infringement.	A
FAR 52.228-7	FAR 28.311-1	Insurance—Liability to Third Persons	M
2152.231-70	2131.270	Accounting and allowable cost	M
FAR 52.232-9	FAR 32.111(c)(2)	Limitation on Withholding of Payments	M
FAR 52.232-17	FAR 32.617(a) and (b)	Interest	M
FAR 52.232-23	FAR 32.806(a)(1)	Assignment of Claims	A
FAR 52.232-33	FAR 32.1110(a)(1)	Payment by Electronic Funds Transfer—Central Contractor Registration.	M
2152.232-70	2132.171	Payments	M
2152.232-71	2132.772	Non-commingling of FEGLI Program funds	M
2152.232-72	2132.806	Approval for assignment of claims	M
FAR 52.233-1	FAR 33.215	Disputes (Alternate I)	M
2152.237-70	2137.110	Continuity of services	M
FAR 52.242-1	FAR 42.802	Notice of Intent to Disallow Costs	M
FAR 52.242-3	FAR 42.709-6	Penalties for Unallowable Costs	M
FAR 52.242-13	FAR 42.903	Bankruptcy	M
2152.243-70	2143.205	Changes	M
FAR 52.244-5	FAR 44.204(c)	Competition in Subcontracting	M
2152.244-70	2144.204	Subcontracts	M
FAR 52.245-2	FAR 45.106(b)(1)	Government Property (Fixed-Price Contracts)	M
FAR 52.246-4	FAR 46.304	Inspection of Services—Fixed Price	M
FAR 52.246-25	FAR 46.805	Limitation of Liability—Services	M
2152.246-70	2146.270-1	Quality assurance requirements	M
FAR 52.247-63	FAR 47.405	Preference for U.S.-Flag Air Carriers	M

FEGLI PROGRAM CLAUSE MATRIX—Continued

Clause No.	Text reference	Title	Use status
FAR 52.249-2	FAR 49.502(b)(1)(i)	Termination for Convenience of the Government (Fixed-Price) ...	M
FAR 52.249-8	FAR 49.504(a)(1)	Default (Fixed Price Supply and Service)	M
FAR 52.249-14	FAR 49.505(d)	Excusable Delays	M
2152.249-70	2149.505-70	Renewal and termination	M
FAR 52.251-1	FAR 51.107	Government Supply Sources	A
FAR 52.252-4	FAR 52.107(d)	Alterations in Contract	M
FAR 52.252-6	FAR 52.107(f)	Authorized Deviations in Clauses	M

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