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**Letter Number 2023-18(b)**

**Date: September 14, 2023**

Fee-for-service [n/a]

Experience-rated HMO [15]

Community-rated HMO [n/a]

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## **Subject: Changes to the Standard Contract for Contract Year 2024**

Please review Attachment A, which details the proposed Standard Contract changes for Federal Employees Health Benefits Program Experience Rated (ER) Carriers for Contract Year 2024. If you have comments, please provide them as soon as possible but no later than October 12, 2023.

### **The proposed amendments set forth in Attachment A are as follows:**

1. Amends Section 1.23 to clarify application to pregnancy per Carrier Letter (CL) 2022-12.
2. Amends Section 1.24 to clarify application to pregnancy per CL 2022-12.
3. Amends Section 1.28 to allow revisions to take effect before expiration of a current Pharmacy Benefit Manager (PBM) contract or option to extend the contract term.
4. Amends Section 1.28 (a)(8) to clarify the term "third party."
5. Amends Section 1.28 (a)(9) to clarify that the requirement extends to pharmacies affiliated with the Pharmacy Benefit Manager (PBM).
6. Amends Section 1.28 (a)(10) to clarify that mid-year formulary changes includes changes made to the formulary on or after the first day of the plan year and to fix a typographical error.
7. Amends Section 1.28 (b)(2) to clarify the applicability of the PBM Transparency Standards and to replace the term "drugs" in the drug pricing section with the terms "drugs, products and supplies."
8. Amends Section 1.28 (b)(4) to clarify that the PBM must identify sources of revenue to the Carrier and to OPM.
9. Amends Section 1.28 (b)(5) to clarify that the PBM's fees are the only profit source to the PBM.
10. Amends Section 1.28 (b)(10) to add a provision that the PBM must provide to the OPM OIG any wholesaler/distributor contracts for PBM

- owned or affiliated mail order and specialty pharmacies.
11. Amends Section 1.28 (c)(6) to include additional gag clauses that are not covered in the PBM transparency standards. The current gag clause was expanded to include all providers and disclosure of clinical criteria/medical policies on prescription drugs.
  12. Amends Section 1.28 (d)(4) to replace the term "PBM" with "pharmacy" since the PBM is not dispensing the medications.
  13. Amends Section 1.28 (d)(5) to replace the term "PBM" with "pharmacy" since the PBM is not dispensing the medications.
  14. Amends Section 1.28 (f)(1) to fix a typographical error.
  15. Amends Section 2.16 to update current language based on the 2024 Call Letter (CL-2023-04). The amended language includes updating Medicare Part B language to include Part B drugs in retail, specialty, and mail order pharmacies. Also, new Employer Group Waiver Plan (EGWP) language is added to accommodate Medicare EGWP CL-2023-02.
  16. Amends Section 2.18(a) to add the requirement that Carriers report information about pharmacy benefits and health care spending to the Department of Health and Human Services.
  17. Amends Section 5.14 to provide updated Federal Acquisition Regulations (FAR) language.
  18. Amends Section 5.54 to provide updated FAR language.
  19. Amends Section 5.60 to provide updated FAR language.
  20. Amends Appendix E, Small Business Subcontracting Plan to provide updated FAR language.
  21. Amends Appendix F of the FEHB contract regarding the measures utilized in the Plan Performance Assessment.

Please email your comments to [FEHBcontramend@opm.gov](mailto:FEHBcontramend@opm.gov), with a copy to your OPM Health Insurance Specialist.

We look forward to working with you on your contract.

Sincerely,

Laurie Bodenheimer  
Associate Director  
Healthcare and Insurance

Encl.: Attachment A - Proposed Changes to Standard 2024 Experience Rated HMO Health Benefits Contract

# **Attachment A Proposed Changes to Standard 2024 Community Rated HMO Health Benefits Contract**

**Note:** New and revised language is underlined in blue and language to be deleted is ~~struck out in red~~.

## **1. Section 1.23 Notice on Termination of FEHBP or Provider Contract**

**Clarifies application to pregnancy per CL 2022-12.**

SECTION 1.23

NOTICE ON TERMINATION OF FEHBP OR PROVIDER CONTRACT ~~(JAN 2003)~~(JAN 2024)

(a) Members who are undergoing treatment for a chronic or disabling condition or ~~who are in the second or third trimester of~~ for pregnancy at the time a Carrier terminates (1) its FEHBP contract, (2) the Members' specialty provider contract, or (3) a Preferred Provider Organization (PPO) or Point of Service (POS) network contract, for reasons other than cause, may be able to continue to see their specialty provider for up to 90 days or through their postpartum care.

(b) The Carrier shall notify its members in writing of its intent to terminate all or part of its FEHBP contract, including service area reductions, or the members' specialty provider contract, or a PPO or POS network contract, for reasons other than cause, in order to allow sufficient time for the members to arrange for continued care after the 90-day period or their postpartum care, whichever applies. The Carrier shall send the required notice to the member if the Carrier has in its records an address for the member different from the enrollee's address; otherwise, the Carrier may send the notice to the enrollee. The Carrier shall send the notice in time to ensure it is received by the members no less than 90 days prior to the date it terminates the contract, unless the Carrier demonstrates it was prevented from doing so for reasons beyond its control. The Carrier's prompt notice will ensure that the notification period and the transitional care period run concurrently.

## **2. Section 1.24 Transitional Care**

**Clarifies application to pregnancy per CL 2022-12.**

SECTION 1.24

TRANSITIONAL CARE ~~(JAN 2003)~~(JAN 2024)

(a) "Transitional care" is specialized care provided for up to 90 days or through the postpartum period, whichever is later, to a member who is undergoing treatment for a chronic or disabling condition or ~~who is in the second or third trimester of~~ for pregnancy when the Carrier terminates (1) all or part of its FEHBP contract, or (2) the member's specialty provider contract for reasons

## Attachment A - Experience Rated HMO Proposed 2024 Changes

other than cause, or (3) a Preferred Provider Organization (PPO) or Point of Service (POS) network contract for reasons other than cause. The 90-day period begins the earlier of the date the member receives the notice required under Section ~~1.24~~ 1.23, Notice on Termination of FEHBP or Provider Contract (HMO), or the date the Carrier's or the provider's contract ends.

(b) The Carrier shall ensure the following:

(1) If it terminates a part of its FEHB contract or a specialty provider contract or a PPO or POS network contract other than for cause, it allows members who are undergoing treatment for a chronic or disabling condition or ~~who are in the second or third trimester of~~ for pregnancy to continue treatment under the specialty provider for up to 90 days, or through their postpartum period, whichever is later, under the same terms and conditions that existed at the beginning of the transitional care period; and

(2) If it enrolls a new member who voluntarily changed Carriers because the member's former Carrier was no longer available in the FEHB Program, it provides transitional care for the member if ~~he or she~~ the member is undergoing treatment for a chronic or disabling condition or ~~is in the second or third trimester of~~ for pregnancy for up to 90 days, or through the postpartum period, whichever is later, under the same terms and conditions the member had under the prior Carrier.

(c) In addition, the Carrier shall

(1) pay for or provide the transitional care required under this clause at no additional cost to members;

(2) require the specialty provider or network to promptly transfer all medical records to the designated new provider during or upon completion of the transition period, as authorized by the patient; and,

(3) require the specialty provider or network to give all necessary information to the Carrier for quality assurance purposes.

### **3. Section 1.28 Standards for Arrangements with Pharmacy Benefit Managers**

**Amends section to allow revisions to take effect before expiration of a current PBM contract or option to extend the contract term.**

#### SECTION 1.28

STANDARDS FOR ARRANGEMENTS WITH PHARMACY BENEFIT MANAGERS  
CONTRACT ~~(JAN 2003)~~(JAN 2024)

## Attachment A - Experience Rated HMO Proposed 2024 Changes

The Carrier will ensure and report that the following standards are included in new, renewing or amended contracts with Pharmacy Benefit Managers (PBMs) providing services to Enrollees and family members effective on or after January 1, 2022.

~~Notwithstanding the foregoing, revisions to Section 1.26 shall not take effect before the expiration of the Carrier's current contract (including the exercise of an existing option to extend the term by not more than one year at a time) but not later than January 2025.~~

The PBM includes all entities that have a majority ownership interest in or majority control over the PBM. The PBM also includes any other subsidiary of the entity that has majority ownership or control over the PBM.

#### **4. Section 1.28 (a)(8) Standards for Arrangements with Pharmacy Benefit Managers**

**Clarifies that the term 'Third Party' does not include wholesaler and distributor arrangements with retail pharmacies.**

##### SECTION 1.28

STANDARDS FOR ARRANGEMENTS WITH PHARMACY BENEFIT MANAGERS  
~~(JAN 2003)~~ [\(JAN 2024\)](#)

(8) "Third Party" means any consultant, partner, administrator, intermediary or other entity outside the scope of the relationships between or among the PBM and the FEHB enrollee, Carrier, and/or OPM. ~~It does not include wholesalers, distributors, or pharmacies.~~ A wholesaler or distributor is not considered to be a Third Party when the wholesaler or distributor acts pursuant to its arrangement with the retail pharmacy.

#### **5. Section 1.28 (a)(9) Standards for Arrangements with Pharmacy Benefit Managers**

**Adds language to clarify that the requirement extends to pharmacies affiliated with the PBM.**

##### SECTION 1.28

STANDARDS FOR ARRANGEMENTS WITH PHARMACY BENEFIT MANAGERS  
~~(JAN 2003)~~ [\(JAN 2024\)](#)

(9) "Total Product Revenue" means the total dollar sales of prescription drugs at the prescription price negotiated with clients and associated administrative fees, either through retail Networks or PBM-owned, ~~or~~ controlled, or affiliated mail order pharmacies, with respect to the PBM's entire client base, for the reporting period.

**6. SECTION 1.28 (a)(10) Standards for Arrangements with Pharmacy Benefit Managers**

**Clarifies that mid-year formulary changes includes changes made to the formulary on or after the first day of the plan year. Corrects typographical error (changes “costs sharing” to “cost sharing”).**

SECTION 1.28

STANDARDS FOR ARRANGEMENTS WITH PHARMACY BENEFIT MANAGERS  
~~(JAN 2003)~~ [\(JAN 2024\)](#)

(10) “Mid-year formulary change” means any change that occurs to the formulary effective on a date in a plan year [on or after](#) ~~later than~~ the first day of the plan year. Positive mid-year formulary changes enhance formularies by adding drugs or placing a drug on a lower ~~costs~~ [cost](#) sharing tier or removing or relaxing utilization management (UM) requirements for drugs. Restrictive mid-year formulary changes negatively impact formularies by removing drugs, moving drugs to higher tiers, or tightening UM requirements for drugs.

**7. Section 1.28 (b) (2) Standards for Arrangements with Pharmacy Benefit Managers**

**Provides new language in the PBM section regarding transparency standards and the required pass-through of negotiated amounts. Replaces the term “drugs” with the terms “drugs, products, and supplies.”**

SECTION 1.28

STANDARDS FOR ARRANGEMENTS WITH PHARMACY BENEFIT MANAGERS  
~~(JAN 2003)~~ [\(JAN 2024\)](#)

SECTION 1.28(b)

(b) Transparency Standards

(1) The PBM shall not be majority-owned or majority-controlled by a pharmaceutical manufacturing company. The PBM must disclose to the Carrier and OPM the name of any entity that has a majority ownership interest in or majority control over the PBM.

(2) The PBM shall agree to provide Pass-Through Transparent Pricing for the following categories:

(i) Retail Pharmacies: The PBM shall charge the Carrier no more than the amount as determined by Pass-Through Transparent Pricing paid to the pharmacy for each ~~drug~~ [drug, product or supply](#) plus a dispensing fee. [The value of the discounts negotiated in each pharmacy agreement must be](#)

passed-through to the Carrier including all transaction fees, credits, true-ups, and other amounts collected back from the pharmacies.

(ii) Mail Order or Specialty Pharmacies not owned or affiliated with the PBM: The PBM shall charge the Carrier no more than the amount as determined by Pass Through Transparent Pricing paid to the pharmacy for each drug, product, or supply plus a dispensing fee. The value of the discounts negotiated in each pharmacy agreement must be passed-through to the Carrier including all transaction fees, credits, true-ups, and other amounts collected back from the pharmacies.

(iii) Mail Order or Specialty Pharmacies owned or affiliated with the PBM: The PBM shall charge the Carrier the cost of ~~drugs~~ drugs, products, and supplies based on the pharmacy's actual acquisition cost, plus a dispensing fee. Actual acquisition cost must include all non-specific drug discounts received from drug wholesalers and manufacturers that are attributable to the FEHBP including, but not limited to, buy side rebates, manufacturer charge backs, prompt payment discounts, market share incentives, bulk purchase/volume incentives, and other direct and indirect credits. Costs shall not be based on industry benchmarks or set pricing, including but not limited to, Average Acquisition Cost (~~AAC~~), Maximum Allowable Charge (MAC), Average Wholesale Price (AWP), and Wholesale Acquisition Cost (WAC).

#### **8. Section 1.28 (b)(4) Standards for Arrangements with Pharmacy Benefit Managers**

**Clarifies that the PBM must identify sources of revenue to the Carrier and OPM.**

SECTION 1.28

STANDARDS FOR ARRANGEMENTS WITH PHARMACY BENEFIT MANAGERS  
(~~JAN 2003~~)([JAN 2024](#))

(4) The PBM must identify all sources of ~~profit~~ revenue or other consideration to the Carrier and OPM as it relates to the FEHB contract.

#### **9. Section 1.28 (b)(5) Standards for Arrangements with Pharmacy Benefit Managers**

**Clarifies that the PBM's fees are the only profit source to the PBM.**

SECTION 1.28

STANDARDS FOR ARRANGEMENTS WITH PHARMACY BENEFIT MANAGERS  
(~~JAN 2003~~)([JAN 2024](#))

(5) All of the PBM's fees, including, but not limited to, administrative or dispensing fees, must be clearly identified to retail claims, mail claims,

## Attachment A - Experience Rated HMO Proposed 2024 Changes

specialty claims, and clinical or other programs, if applicable. The PBM must agree to disclose each fee to the Carrier and OPM. [The PBM's fees must represent its sole source of profit for administering the Carrier's pharmacy benefits at pass-through transparent pricing.](#)

### **10. Section 1.28 (b)(10)(ii) Standards for Arrangements with Pharmacy Benefit Managers**

**Adds a provision that the PBM must provide to OIG any wholesaler and/or distributor contracts for PBM owned or affiliated mail order and specialty pharmacies. Fixes typographical error (changes period (.) to semicolon (;)).**

#### SECTION 1.28

#### STANDARDS FOR ARRANGEMENTS WITH PHARMACY BENEFIT MANAGERS ~~(JAN 2003)~~[\(JAN 2024\)](#)

(10) In accordance with FEHBAR 1652.204-74, FAR 52.215-2 and FEHBAR 1652.246-70, all contracts and other documentation that support amounts charged and credited to the Carrier contract are fully disclosed to and auditable by the OPM Office of Inspector General (OPM OIG). The PBM must provide the OPM OIG upon request complete copies of all PBM records including, but not limited to:

(i) All PBM contracts with Participating Pharmacies, including invoices, receipts and credits;

(ii) All PBM contracts with Pharmaceutical Manufacturers, including invoices, receipts, and credits;

[\(iii\) All PBM owned or affiliated mail order and specialty pharmacy contracts with Pharmaceutical Manufacturers, Distributors, and Wholesalers, including invoices, receipts, and credits;](#)

[\(iv\)](#) ~~(iii)~~ All PBM contracts with Third Parties purchasing or using claims data;

[\(v\)](#) ~~(iv)~~ All PBM transmittals in connection with sales of claims data to Third Parties and other entities;

[\(vi\)](#) ~~(v)~~ All PBM Maximum Allowable Cost (MAC) price lists.

[\(vii\)](#) ~~(vi)~~ All PBM records relating to patient assistance maximizer programs, optimizer programs, or similar arrangements with Third Parties; and

[\(viii\)](#) ~~(vi)~~ All PBM records pertaining to arrangements with Third Parties, including Group Purchasing Organizations (GPOs).



(11) The Carrier at the minimum must perform an annual check of the PBM's adherence

**11. Section 1.28 (c)(6) Standards for Arrangements with Pharmacy Benefit Mangers**

**Addresses additional gag clauses that are not covered in the PBM Transparency Standard. The current gag clause was expanded to include all providers and disclosure of clinical criteria/medical policies on prescription drugs.**

SECTION 1.28

STANDARDS FOR ARRANGEMENTS WITH PHARMACY BENEFIT MANAGERS

~~(JAN 2003)~~[\(JAN 2024\)](#)

(c) Integrity Standards

(6) A PBM, or Carrier, shall not enter into a contract [or other agreement](#) ~~with a pharmacy or pharmacist~~ that [prevents](#), prohibits or penalizes a [PBM, Carrier, or any provider \(including a pharmacy or pharmacist\)](#) for disclosure of information ~~to a member~~ regarding:

(i). The cost of a prescription medication to the member; or

(ii). The availability of any therapeutically-equivalent alternative medications; or alternative methods of purchasing the prescription medication, including but not limited to, paying a cash price that is less expensive to the member than the cost of the prescription under the Plan; [or](#)

[\(iii\). Any medical policies or clinical criteria for coverage of a prescription medication.](#)

**12. Section 1.28 (d)(4) Standards for Arrangements with Pharmacy Benefit Managers**

**Replaces the term "PBM" with "pharmacy" since the PBM is not dispensing the medications.**

SECTION 1.28

STANDARDS FOR ARRANGEMENTS WITH PHARMACY BENEFIT MANAGERS

~~(JAN 2022)~~[\(JAN 2024\)](#)

(4) Dispensing accuracy. The ~~PBM~~ [pharmacy](#) dispenses its prescriptions to the correct patient and for the correct drug, drug strength and dosage in accordance with the prescription not less than 99.9 percent of the time.

### **13. Section 1.28 (d)(5) Standards for Arrangements with Pharmacy Benefit Managers**

**Replaces the term “PBM” with “pharmacy” since the PBM is not dispensing the medications.**

#### SECTION 1.28

NOTICE ON TERMINATION OF FEHBP OR PROVIDER CONTRACT ~~(JAN 2022)~~(JAN 2024)

(5) Mail service pharmacy turnaround time. The ~~PBM~~ pharmacy promptly dispenses and ships at least 98 percent on average of all prescriptions not requiring intervention or clarification within 3 business days or meets an equivalent measure approved by OPM.

### **14. Section 1.28 (f)(1) Standards for Arrangements with Pharmacy Benefit Managers**

**Fixes typographical error (remove unnecessary “the”).**

#### SECTION 1.28

STANDARDS FOR ARRANGEMENTS WITH PHARMACY BENEFIT MANAGERS ~~(JAN 2003)~~(JAN 2024)

- (1) The PBM must treat the Prescriber, and not itself, as the ultimate decision-maker. Furthermore, to the extent appropriate under the circumstances, the PBM must allow ~~the~~ patient input into that decision-making process. At a minimum, the PBM must provide the patient with a written notice in the package sent to the patient that the drug interchange has occurred with the approval of the Prescriber.

### **15. Section 2.16 Coordination of Prescription Drug Benefits with Medicare**

**Amends current language based on 2024 Call Letter updates (CL2023-04). Updates Medicare Part B language to include Part B drugs in retail, specialty and mail order pharmacies (CL2023-04). Includes new EGWP language to accommodate Medicare EGWP coordination (CL2023-02).**

#### SECTION 2.16

COORDINATION OF PRESCRIPTION DRUG BENEFITS WITH MEDICARE ~~(JAN 2015)~~(JAN 2024)

- (a) The Carrier shall comply with the Center for Medicare and Medicaid Services’ (CMS) Part D Coordination of Benefits Guidance. ~~when the mechanisms and systems indicated in this guidance are in~~

## Attachment A - Experience Rated HMO Proposed 2024 Changes

~~place and functioning properly.~~ This guidance provides the requirements and procedures for coordination of benefits between Part D plans and other providers of prescription drug coverage.

- (b) For Medicare Part B covered prescription drugs, the Carrier will coordinate benefits with Medicare ~~except including, but not limited to,~~ when such prescription drugs are purchased from retail, ~~specialty,~~ or mail order pharmacies. ~~The Carrier may pay its benefits on retail pharmacy or mail order drugs eligible for Medicare Part B coverage or may coordinate benefits subject to Contracting Officer approval. OPM may recover funds if upon any future audit(s), -it is determined that a drug was inappropriately billed to FEHB when it should have been adjudicated and paid for under the member's Medicare Part B benefit.~~

- (c) For Medicare Advantage Prescription Drug Employer Group Waiver Plans and stand-alone Prescription Drug Employer Group Waiver Plans (MA-PD EGWPs and PDP-EGWPs), the Carrier shall comply with CMS Guidance on EGWPs and related OPM guidance.

### 16. Section 2.18 (a) Surprise Billing

**Amends section heading and adds section provisions. The Consolidated Appropriations Act, 2021 contained requirements that group health plans and issuers are required to report information about pharmacy benefits and health care spending to the Department of Health and Human Services (HHS) on a yearly basis. Pursuant to 5 U.S.C. 8910 and FEHB Carrier Letter 2022-12, FEHB carriers must also report this data to HHS by June 1 of each year. This amendment adds this requirement to the FEHB contracts as well.**

#### SECTION 2.18

#### SURPRISE BILLING ~~AND TRANSPARENCY (JAN 2022)~~(JAN 2024)

(a)The Carrier shall comply with requirements described in the provisions of sections 2799A-1, 2799A-2, 2799A-3, 2799A-4, 2799A-5, and 2799A-7, ~~and~~ 2799A-8 and 2799A-10(a) of the Public Health Service Act, sections 716, 717, 718, 719, 720, 722, ~~and~~ 723 and 725(a) of the Employee Retirement Income Security Act of 1974, and sections 9816, 9817, 9818, 9819, 9820, 9822, ~~and~~ 9823 and 9825(a) of the Internal Revenue Code of 1986 (as applicable) in the same manner as such provisions apply to a group health plan or health insurance issuer offering group or individual health insurance coverage, as described in such sections.

### 17. Section 5.14 Utilization of Small Business Concerns

**Updates per changes to the FAR.**

Attachment A - Experience Rated HMO Proposed 2024 Changes

SECTION 5.14

Utilization of Small Business Concerns (~~OCT 2018~~)([OCT 2022](#)) (FAR 52.219-8)

(a) Definitions. As used in this contract --

“HUBZone small business concern” means a small business concern [that meets the requirements described in 13 CFR 126.200](#), certified by the Small Business Administration, ~~that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration (SBA) and designated by SBA as a HUBZone small business concern in the Dynamic Small Business Search (DSBS) and SAM.~~

“Service-disabled veteran-owned small business concern”

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“Small business concern” means a ~~small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto~~ [concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation and qualified as a small business under the criteria and size standards in 13 CFR part 121, including the size standard that corresponds to the NAICS code assigned to the contract or subcontract.](#)

“Small disadvantaged business concern”, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that--

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by—

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103)

## Attachment A - Experience Rated HMO Proposed 2024 Changes

and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

“Veteran-owned small business concern” means a small business concern--

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern--

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

Attachment A - Experience Rated HMO Proposed 2024 Changes

(c)(1) A joint venture qualifies as a small business concern if –

(i) Each party to the joint venture qualifies as small under the size standard for the solicitation; or

(ii) The protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under a SBA mentor-protégé program.

(2) A joint venture qualifies as –

(i) A service-disabled veteran-owned small business concern if it complies with the requirements in 13 CFR part 125; or

(ii) A HUBZone small business concern if it complies with the requirements in 13 CFR 126.616(a) through (c).

(d) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(d e)(1) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, a veteran-owned small business, service-disabled veteran-owned small business or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(2) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if–

(i) The subcontractor is registered in SAM; and

(ii) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(3) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

## Attachment A - Experience Rated HMO Proposed 2024 Changes

(4) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing ~~the System for Award Management or by contacting the SBA. Options for contacting the SBA include—~~

~~(i) HUBZone small business database search application web page at [http://dsbs.sba.gov/dsbs/search/dsp\\_searchhubzone.cfm](http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm); or <http://www.sba.gov/hubzone>;~~

~~(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; or~~

~~(iii) The SBA HUBZone Help Desk at [hubzone@sba.gov](mailto:hubzone@sba.gov).~~

SAM or by accessing DSBS at [https://web.sba.gov/pro-net/search/dsp\\_dsbs.cfm](https://web.sba.gov/pro-net/search/dsp_dsbs.cfm). If the subcontractor is a joint venture, the Contractor shall confirm that at least one party to the joint venture is certified by SBA as a HUBZone small business concern. The Contractor may confirm the representation by accessing SAM.

### **18. Section 5.54 Penalties for Unallowable Costs**

#### **Updates per changes to the FAR.**

##### SECTION 5.54

PENALTIES FOR UNALLOWABLE COSTS ~~(SEP 2021)~~(DEC 2022) (FAR 52.242-3)

(a) Definition. Proposal, as used in this clause, means either --

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which--

(i) Relates to any payment made on the basis of billing rates; or

(ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. ~~2324~~

## Attachment A - Experience Rated HMO Proposed 2024 Changes

[3748](#) or 41 U.S.C. chapter 43, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).

(c) The Contractor shall not include in any proposal any cost that is unallowable, as defined in subpart 2.1 of the FAR, or an executive agency supplement to the FAR.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to--

(1) The amount of the disallowed cost allocated to this contract; plus

(2) Simple interest, to be computed--

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and

(ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of 41 U.S.C. chapter 71, Contract Disputes.

(g) Pursuant to the criteria in FAR 42.709-6, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.

(h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

### **19. Section 5.60 Subcontracts for Commercial Products and Commercial Services**

#### **Updates per changes to the FAR.**

#### SECTION 5.60



## Attachment A - Experience Rated HMO Proposed 2024 Changes

### SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (~~JAN 2022~~)(JUN 2023) (FAR 52.244-6)

(a) Definitions. As used in this clause —

“Commercial product,” “commercial service,” and “commercially available off-the-shelf item” have the meanings contained in Federal Acquisition Regulation 2.101.

“Subcontract” includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial products, commercial services, or non-developmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial products or commercial services:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Nov 2021) (41 U.S.C. 3509), if the subcontract exceeds the threshold specified in FAR 3.1004(a) on the date of subcontract award, and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017).

(iv) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (Nov 2021), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204-21.

(v) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

## Attachment A - Experience Rated HMO Proposed 2024 Changes

(vi) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

[\(vii\) 52.204-27, Prohibition on a ByteDance Covered Application \(JUN 2023\) \(Section 102 of Division R of Pub.L. 117-328\).](#)

~~(vii)~~ [\(viii\) 52.219-8, Utilization of Small Business Concerns \(OCT 2018 2022\)](#) (15 U.S.C.

637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds, the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

~~(viii)~~ [\(ix\) 52.222-21 Prohibition of Segregated Facilities \(Apr 2015\)](#)

~~(ix)~~ [\(x\) 52.222-26, Equal Opportunity \(Sep 2015\) \(E.O. 11246\).](#)

~~(x)~~ [\(xi\) 52.222-35, Equal Opportunity for Veterans \(Jun 2020\) \(38 U.S.C. 4212\(a\).](#)

~~(xi)~~ [\(xii\) 52.222-36, Equal Opportunity for Workers with Disabilities \(Jun 2020\) \(29 U.S.C. 793\).](#)

~~(xii)~~ [\(xiii\) 52.222-37, Employment Reports on Veterans \(Jun 2020\) \(38 U.S.C. 4212\).](#)

~~(xiii)~~ [\(xiv\) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act \(Dec 2010\) \(E.O. 13496\), if flow down is required in accordance with paragraph \(f\) of FAR clause 52.222-40.](#)

~~(xiv)~~ [\(xv\) \(A\) 52.222-50, Combating Trafficking in Persons \(Nov 2021\) \(22 U.S.C. chapter 78 and E.O. 13627\).](#)

(B) Alternate I (MAR 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

~~(xv)~~ [\(xvi\) 52.222-55 , Minimum Wages for Contractor Workers under Executive Order 14026 \(Jan 2022\), if flow down is required in accordance with paragraph \(k\) of FAR clause 52.222-55.](#)

~~(xvi)~~ [\(xvii\) 52.222-62, Paid Sick Leave Under Executive Order 13706 \(Jan 2022\) \(E.O. 13706\), if flowdown is required in accordance with paragraph \(m\) of FAR clause 52.222-62.](#)

## Attachment A - Experience Rated HMO Proposed 2024 Changes

(~~xvii~~ [xviii](#)) (A) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a) if flow down is required in accordance with 52.224-3(f).

(B) Alternate I (Jan 2017) of 52.224-3, if flow down is required in accordance with 52.224-3(f) and the agency specifies that only its agency-provided training is acceptable).

(~~xviii~~ [xix](#)) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. ~~2302~~ [Subtitle A, Part V, Subpart G](#) Note).

(~~xix~~ [xx](#)) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (~~Nov 2021~~ [Mar 2023](#)), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

(~~xx~~ [xxi](#)) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) 46 U.S.C. 55305 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Contractor may flow down to subcontracts for commercial products or commercial services a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

## 20. Appendix E Small Business Subcontracting Plan

### Updates per changes to the FAR.

#### APPENDIX E

SMALL BUSINESS SUBCONTRACTING PLAN (~~NOV 2021~~)([OCT 2022](#)) (FAR 52.219-9)

(a) This clause does not apply to small business concerns.

(b) *Definitions.* As used in this clause—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

## Attachment A - Experience Rated HMO Proposed 2024 Changes

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial products and commercial services sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

“Commercial product” means a product that satisfies the definition of “commercial product” in the Federal Acquisition Regulation (FAR) 2.101.

“Commercial service” means a service that satisfies the definition of “commercial service” in FAR 2.101.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

“Individual subcontracting plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master subcontracting plan” means a subcontracting plan that contains all the required elements of an individual subcontracting plan, except goals, and may be incorporated into individual subcontracting plans, provided the master subcontracting plan has been approved.

“Reduced payment” means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

“Total contract dollars” means the final anticipated dollar value, including the dollar value of all options.

## Attachment A - Experience Rated HMO Proposed 2024 Changes

“Untimely payment” means a payment to a subcontractor that is more than 90 days past due under the terms and conditions of a subcontract for supplies and services for which the Government has paid the prime contractor.

(c) (1) The Offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the Offeror is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The subcontracting plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the Offeror ineligible for award of a contract.

(2)(i) The Contractor may accept a subcontractor’s written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) The Contractor may accept a subcontractor’s representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if–

(A) The subcontractor is registered in SAM; and

(B) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(iii) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

## Attachment A - Experience Rated HMO Proposed 2024 Changes

(iv) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(d) The offeror's subcontracting plan shall include the following:

(1) Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626-

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe; and

(ii) Where one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate Contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract

## Attachment A - Experience Rated HMO Proposed 2024 Changes

award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual subcontracting plan; or the Offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts, including all indirect costs except as described in paragraph (g) of this clause, to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes); and

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANC and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

## Attachment A - Experience Rated HMO Proposed 2024 Changes

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, SAM, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns; and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the Offeror who will administer the Offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the Offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the Offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.



## Attachment A - Experience Rated HMO Proposed 2024 Changes

(10) Assurances that the Offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the Offeror with the subcontracting plan;

(iii) After November 30, 2017, include subcontracting data for each order when reporting subcontracting achievements for indefinite-delivery, indefinite-quantity contracts with individual subcontracting plans where the contract is intended for use by multiple agencies;

(iv) Submit Standard Form (SF) 294 Subcontracting Report for Individual Contract in accordance with paragraph (I) of this clause. Submit the Summary Subcontract Report (SSR), in accordance with paragraph (I) of this clause. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(v) Ensure that its subcontractors with subcontracting plans agree to submit the SF 294 in accordance with paragraph (I) of this clause. Ensure that its subcontractors with subcontracting plans agree to submit the SSR in accordance with paragraph (I) of this clause

(vi) [RESERVED]; and

(vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own unique entity identifier, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the Standard Forms 294, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include

## Attachment A - Experience Rated HMO Proposed 2024 Changes

at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (*e.g.*, SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, indicating—

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged service-disabled veteran-owned, and women-owned small business sources; and

## Attachment A - Experience Rated HMO Proposed 2024 Changes

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through—

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(12) Assurances that the Offeror will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal. Responding to a request for a quote does not constitute use in preparing a bid or proposal. The Offeror used a small business concern in preparing the bid or proposal if—

(i) The Offeror identifies the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Offeror used the small business concern's pricing or cost information or technical expertise in preparing the bid or proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the Offeror is awarded the contract.

(13) Assurances that the Contractor will provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (d)(12) of this clause. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

(14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment to or utilization of a subcontractor.

(15) Assurances that the Offeror will pay its small business subcontractors on time and in accordance with the terms and conditions of

## Attachment A - Experience Rated HMO Proposed 2024 Changes

the underlying subcontract, and notify the contracting officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see 52.242-5).

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern ~~in accordance with 52.219-8(d)(2)~~. [by accessing SAM or by accessing Dynamic Small Business Search \(DSBS\) at https://web.sba.gov/pro-net/search/dsp\\_dsbs.cfm.](https://web.sba.gov/pro-net/search/dsp_dsbs.cfm)

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, in which a small business concern received a small business preference, upon determination of the successful subcontract Offeror, prior to award of the

## Attachment A - Experience Rated HMO Proposed 2024 Changes

subcontract the Contractor must inform each unsuccessful small business subcontract Offeror in writing of the name and location of the apparent successful Offeror and if the successful subcontract Offeror is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concern.

(7) Assign each subcontract the NAICS code and corresponding size standard that best describes the principal purpose of the subcontract.

(f) A master subcontracting plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Offeror by this clause; provided—

(1) The master subcontracting plan has been approved;

(2) The Offeror ensures that the master subcontracting plan is updated as necessary and provides copies of the approved master subcontracting plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master subcontracting plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial products and commercial services. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial product or commercial service. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR for all contracts covered by its commercial plan. A Contractor authorized to use a commercial subcontracting plan shall include in its subcontracting goals and in its SSR all indirect costs, with the exception of those such as the following: Employee salaries and benefits; payments for petty cash; depreciation; interest; income taxes; property taxes; lease payments; bank fees; fines, claims, and dues; original equipment manufacturer relationships during warranty periods (negotiated up front with the product); utilities and other services purchased from a municipality or an entity solely authorized by the municipality to provide those services in a particular geographical region;

## Attachment A - Experience Rated HMO Proposed 2024 Changes

and philanthropic contributions. This report shall be acknowledged or rejected by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one subcontracting plan. When a contract modification exceeds the subcontracting plan threshold in 19.702(a), or an option is exercised, the goals of the existing subcontracting plan shall be amended to reflect any new subcontracting opportunities. When the goals in a subcontracting plan are amended, these goal changes do not apply retroactively.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Products and Commercial Services, or when the subcontractor provides a commercial product or commercial service subject to the clause at FAR 52.244-6, Subcontracts for Commercial Products and Commercial Services, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with—

(1) the clause of this contract entitled "Utilization Of Small Business Concerns," or

(2) an approved plan required by this clause, shall be a material breach of the contract and may be considered in any past performance evaluation of the Contractor.

(l) The Contractor shall submit a SF 294. Purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor are not included in these reports. Subcontract awards by affiliates shall be treated as subcontract awards by the Contractor. Subcontract award data reported by the Contractor and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory

## Attachment A - Experience Rated HMO Proposed 2024 Changes

authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) SF 294. This report is not required for commercial plans. The report is required for each contract containing an individual subcontracting plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period. When a Contracting Officer rejects a report, the Contractor shall submit a revised report within 30 days of receiving the notice of report rejection.

(ii) (A) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(B) If a subcontracting plan has been added to the contract pursuant to 19.702(a)(3) or 19.301-2(e), the Contractor's achievements must be reported in the report on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

(i) When a subcontracting plan includes indirect costs in the goals, these costs must be included in this report.

(ii) The authority to acknowledge receipt or reject the SF 294 resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) SSR. (i) Reports submitted under individual contract plans.

(A) This report encompasses all subcontracting under prime contracts and subcontracts with an executive agency, regardless of the dollar value of the subcontracts. This report also includes indirect costs on a prorated basis when the indirect costs are excluded from the subcontracting goals.

## Attachment A - Experience Rated HMO Proposed 2024 Changes

(B) The report may be submitted on a corporate, company or subdivision (e.g., plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If the Contractor and/or a subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over the applicable threshold specified in FAR 19.702(a), and the contract contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime contractors.

(D) The report shall be submitted annually by October 30, for the twelve month period ending September 30. When a Contracting Officer rejects an SSR, the Contractor is required to submit a revised SSR within 30 days of receiving the notice of report rejection.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan.

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year and all indirect costs.

(B) The report shall be submitted annually, within 30 days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.



## 21. Appendix F Plan Performance Assessment

### Amends Appendix F of the FEHB contract regarding the measures utilized in the Plan Performance Assessment.

#### APPENDIX F

Measures and contributions to performance areas and scores for ~~2023~~ [2024](#) Performance and ~~2024~~ [2025](#) Service Charge.

To be performed in accordance with the ~~2023~~ [2024](#) FEHB Plan Performance Assessment Procedure Manual and the FEHB Plan Performance Assessment Methodology Carrier Letter (CL 2020-15). The Service Charge for the ~~2024~~ [2025](#) contract year will be based on the Overall Performance Score calculated in accordance with this Appendix F.

#### 1. Performance Area Contributions to Overall Performance Score (OPS)

Performance Area	Contribution to Overall Performance Score
Clinical Quality, Customer Service, and Resource Use	65%
Contract Oversight	35%

#### 2. Clinical Quality, Customer Service, and Resource Use (QCR) Performance Area Measures

Performance Area	Measure	Abbrv	Measure Source	Priority Level	Measure Weight
Clinical Quality	Avoidance of Antibiotic Treatment for Acute Bronchitis/Bronchiolitis (18-64)	AAB	HEDIS	1	2.50
	Controlling High Blood Pressure	CBP	HEDIS	1	2.50
	Hemoglobin A1c Control for Patients with Diabetes (HbA1c Control <8.0%)	HBD	HEDIS	1	2.50
	<a href="#">Antidepressant Medication</a>	<a href="#">AMM</a>	<a href="#">HEDIS</a>	<a href="#">2</a>	<a href="#">1.25</a>

Attachment A - Experience Rated HMO Proposed 2024 Changes

Performance Area	Measure	Abbrv	Measure Source	Priority Level	Measure Weight
	<a href="#">Management (Effective Continuation)</a>				
	Asthma Medication Ratio	AMR	HEDIS	2	1.25
	Breast Cancer Screening	BCS- <del>E</del>	HEDIS	2	1.25
	Cervical Cancer Screening	CCS	HEDIS	2	1.25
	<a href="#">Childhood Immunization Status (Combo 10)</a>	<a href="#">CIS</a>	<a href="#">HEDIS</a>	<a href="#">2</a>	<a href="#">1.25</a>
	Colorectal Cancer Screening ( <a href="#">51-75</a> )	COL	HEDIS	2	1.25
	Follow-Up After Emergency Department Visit for Substance Use (30 Day- <a href="#">Total</a> )	FUA	HEDIS	2	1.25
	Follow-Up After Emergency Department Visit for Mental Illness (30 Day- <a href="#">Total</a> )	FUM	HEDIS	2	1.25
	<del>Flu Vaccinations for Adults (18-64)</del>	<del>FVA</del>	<del>CAHPS</del>	<del>2</del>	<del>1.25</del>
	Prenatal and Postpartum Care (Timeliness of Prenatal Care)	PPC	HEDIS	2	1.25
	Statin Therapy for Patients with Cardiovascular	SPC	HEDIS	2	1.25

Attachment A - Experience Rated HMO Proposed 2024 Changes

Performance Area	Measure	Abbrv	Measure Source	Priority Level	Measure Weight
	Disease (Statin Adherence 80%)				
	<a href="#">Use of Opioids from Multiple Providers (Multiple Prescribers)</a>	<a href="#">UOP</a>	<a href="#">HEDIS</a>	<a href="#">2</a>	<a href="#">1.25</a>
	<del>Well Child Visits First 30 Months of Life- Well Child Visits in the Frist 15 months: 6 or More Well Child Visits</del>	<del>W30</del>	<del>HEDIS</del>	<del>2</del>	<del>1.25</del>
Customer Service	Coordination of Care	CoC	CAHPS	3	1.00
	Claims Processing	CP	CAHPS	3	1.00
	Getting Care Quickly	GCQ	CAHPS	3	1.00
	Getting Needed Care	GNC	CAHPS	3	1.00
	Overall Health Plan Rating	RHP	CAHPS	3	1.00
	Overall Personal Doctor Rating	RPD	CAHPS	3	1.00
Resource Use	Use of Imaging Studies for Low Back Pain (18-64)	LBP	HEDIS	1	2.50
	Acute Hospital Utilization	AHU	HEDIS	2	1.25
	Emergency Department Utilization	EDU	HEDIS	2	1.25
	Plan All Cause Readmissions: Observed/Expected (O/E) Ratio	PCR	HEDIS	2	1.25