

and the business of the concern represented, as well as other qualifications necessary to sell the products or services on their merits.

(iii) There should ordinarily be a continuity of relationship between the contractor and the agency. The fact that the agency has represented the contractor over a considerable period of time is a factor for favorable consideration. It is not intended, however, to disqualify newly established contractor-agency relationships where a continuing relationship is contemplated by the parties.

(iv) It should appear that the agency is an established concern. The agency may be either one which has been in business for a considerable period of time or a new agency which is a presently going concern and which is likely to continue in business as a commercial or selling agency in the future. The business of the agency should be conducted in the agency name and characterized by the customary indicia of the conduct of a regular business.

(v) The fact that a selling agency confines its selling activities to the field of Government contracts does not, in and of itself, disqualify it under the covenant. The fact, however, that the selling agency is employed to secure business generally, that is, to represent the concern in connection with sales to the Government, as well as regular commercial sales to non-Government activities, is a factor entitled to favorable consideration in evaluating the case as one coming within the authorized exception. Arrangements confined, however, to obtaining Government contracts, particularly those involving a selling agency organized immediately prior to or during periods of expanded procurement resulting from conditions of national emergency, must be closely scrutinized.

(f) *Fees for "information."* Contingent fees paid for "information" leading to obtaining a Government contract or contracts are included in the prohibition and, accordingly, are in breach of the covenant unless the agent qualified under the exception as a bona fide employee or a bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business.

§ 101-45.313-5 Standard Form 119, Contractor's Statement of Contingent or Other Fees.

Pursuant to the Act and in furtherance of the purpose and objectives stated in sections 1 and 3 thereof, Standard Form 119, shall be used in accordance with the provisions of this § 101-45.313.

§ 101-45.313-6 Use of Standard Form 119, Contractor's Statement of Contingent or Other Fees.

(a) *Required use.* Except as provided in § 101-45.313-7, Standard Form 119 shall be used, without deviation, whenever either part of the inquiry provided for in § 101-45.313-3(a) with respect to contingent fees is answered in the affirmative. The form shall be used also, without deviation, in any other case where an agency desires to obtain such information. When, after use of the form, further information is required, it may be obtained in any appropriate manner. Submission of the form shall be required, normally, only of successful bidders and contractors.

(b) *Statement in lieu of form.* Any bidder who has previously furnished a Standard Form 119 to the office issuing the invitation or negotiating the contract may be permitted to accompany his bid with, or submit in connection with the proposed contract, a signed statement indicating when such completed form was previously furnished, identifying by number the previous invitation or contract in connection with which such form was submitted; and representing that the statements in such previously furnished form are applicable to such subsequent bid or contract. In such case, submission of an additional completed Standard Form 119 need not be required.

§ 101-45.313-7 Exceptions.

The inquiry and agreement specified in § 101-45.313-3(a) need not be made and submission of Standard Form 119 need not be requested in connection with any of the following:

(a) Any advertised contract in which the aggregate amount involved does not exceed \$25,000.

(b) Any negotiated contract in which the aggregate amount involved does not exceed \$5,000.

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(c) Contracts to be made in foreign countries.

(d) Any other contracts, individually or by class, of the Department of Defense, designated by the Secretary, Under Secretary, or Assistant Secretary of a military department. (Reports of any such exceptions shall be filed promptly with the Administrator of General Services.)

[30 FR 2930, Mar. 6, 1965, as amended at 35 FR 12121, July 29, 1970]

§ 101-45.313-8 Enforcement.

(a) *Failure or refusal to furnish representation and agreement.* Each selling agency shall take the necessary steps to assure that the indicated successful bidder or proposed contractor has furnished a representation (negative or affirmative) and agreement as prescribed in § 101-45.313-3.

(1) If the indicated successful bidder makes such representation in the negative such representation may be accepted and award made or offer accepted in accordance with established procedure.

(2) If the indicated successful bidder or proposed contractor makes such representation in the affirmative, a completed Standard Form 119 shall be requested from the bidder or proposed contractor. In the case of formal advertising, the making of an award in accordance with established procedure need not be delayed pending receipt of the form. In the case of negotiation, if the proposed contractor makes such representation in the affirmative, he shall be required to file a completed Standard Form 119 prior to acceptance of the offer or execution of the contract unless the head of the executive agency (including for this purpose, any military department) concerned, or his authorized representative, considers that the interest of the Government will be prejudiced by the suspension of negotiations pending receipt and consideration of an executed Standard Form 119.

(3) If the indicated successful bidder or proposed contractor fails to furnish the representation and agreement, such failure shall be considered a minor informality and, prior to award, such bidder or proposed contractor shall be afforded a further opportunity

to furnish such representation and agreement. A refusal or failure to furnish such representation and agreement, after such opportunity has been afforded, shall require rejection of the bid or offer.

(b) *Failure or refusal to furnish Standard Form 119.* If the successful bidder or contractor, upon request, refuses or fails to furnish a completed Standard Form 119, or a statement in lieu thereof as provided in § 101-45.313-6, the selling agency concerned shall take one or more of the following actions, or other action, as may be appropriate:

(1) If an award has not been made or offer accepted, determine whether the bid or offer should be rejected.

(2) If the contract has been awarded or the offer accepted, determine what action shall be taken, such as making an independent investigation or considering the eligibility of the contractor as a future contractor in accordance with established procedure.

(c) *Misrepresentations or violations of the covenant against contingent fees.* In case of misrepresentation, or violation or breach of the covenant against contingent fees, or some other relevant impropriety, the selling agency concerned shall take one or more of the following actions, or other action, as may be appropriate:

(1) If an award has not been made, or offer has not been accepted, determine whether the bid or offer should be rejected.

(2) If an award has been made or offer has been accepted, take action to enforce the covenant in accordance with its terms, that is, as the best interests of the Government may appear, annul the contract without liability or recover the amount of the fee involved.

(3) Consider the future eligibility as a contractor of the bidder or contractor in accordance with established procedure.

(4) Determine whether the case should be referred to the Department of Justice in accordance with established procedure with respect to determining matters of fraud or criminal conduct.

§ 101-45.313-9 Preservation of records.

Selling agencies shall preserve, for enforcement or report purposes, at