

evaluation of the agreement and other attendant facts and circumstances.

(i) The fees charged should not be inequitable and exorbitant in relation to the services actually rendered. That is, the compensation should be commensurate with the nature and extent of the services and should not be excessive as compared with the fees customarily allowed in the trade concerned for similar services related to commercial (non-Government) business. In evaluating reasonableness of the fee, there should be considered services of the agent other than actual solicitation, as for example, technical, consultant, or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials, or subcontractors for performance of the contract.

(ii) The selling agency should have adequate knowledge of the products 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